The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Infrastructure and Security

BILL:	CS/CS/SB 998
INTRODUCER:	Infrastructure and Security Committee, Community Affairs Committee, and Senator Hutson
SUBJECT:	Housing
DATE:	February 19, 2020 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Ryon	CA	**Fav/CS**
2.	Proctor	Miller	IS	**Fav/CS**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 998 addresses several housing issues related to development zoning 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;
- Provides that local governments may adopt an ordinance to allow accessory dwelling units (ADUs) 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 (DFS);
- Requires the evaluation of additional local government contribution criteria within applications submitted for State Apartment Incentive Loan (SAIL) 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 (FHFC);
- Establishes biannual regional workshops for locally elected officials serving on affordable housing advisory committees (AHACs) to identify and share best affordable housing practices;

- Adds data reporting within a State Housing Initiatives Partnership (SHIP) Program participant's submissions to the FHFC on affordable housing applications approved and denied;
- Permits the FHFC to prioritize a portion of the SAIL Program funds set aside for persons with special needs, to provide funding for the development of newly constructed permanent rental housing on a campus that provides housing for persons in foster care or persons aging out of foster care;
- Expands a tax exemption for housing authorities from state and local taxes by including their nonprofit instrumentality in the exemption; and
- Prevents local governments from circumventing a housing authority's tax exemption through renaming a tax or assessment.

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

- Provides a mobile home buyer will have the option to receive the seller's prospectus or a new prospectus;
- Requires mobile home owner to receive written permission from park owner before exterior modifications or additions;
- Requires property taxes or assessments be disclosed in the prospectus or rental agreement as a separate charge or a factor in order for a park owner to be deemed to have disclosed the passing on of property taxes and assessments;
- Creates a strict prohibition to prevent the park owner from passing on to mobile home owners taxes in an amount in excess of what is actually paid to the tax collector;
- 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 Public Service Commission (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, and built before being damaged or destroyed;
- Revises numerous rights, obligations, and record retention requirements of the park owner and a mobile home park home owner's association; and
- 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.

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

Please see Section V. Fiscal Impact Statement for additional information.

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

II. Present Situation:

The various features of the bill principally address housing issues affecting local government development zoning, impact fees and affordable housing in chs. 125, 163, 166, 196, 420, and

423, F.S., and statutes governing mobile homes within chs. 320, 367 and 723, F.S. The Present Situation within these general topic groupings is included in the Effect of Proposed Changes.

III. Effect of Proposed Changes:

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

Zoning 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.[1] 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.[2] 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.[3]

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[4] or sign regulations or any other regulations controlling the development of land.[5] "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.[6]

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

[1] FLA. CONST. art. VIII, s. 1(f).
[2] FLA. CONST. art. VIII, s. 1(g).
[3] FLA. CONST. art. VIII, s. 2(b). See also s. 166.021(1), F.S.
[4] 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.
[5] *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.
[6] Section 163.3213(1)(b), F.S.

distribution, location, and extent of the uses of land.[7] Specified use designations include those for residential, commercial, industry, agriculture, recreation, conservation, education, and public facilities.[8]

State law requires a proposed comprehensive plan amendment to receive public hearings, the first held by the local planning board.[9] 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.[10]

In 2011, the Legislature bifurcated the process for approving comprehensive plan amendments.[11] Most plan amendments are placed into the Expedited State Review Process, while plan amendments relating to large-scale developments are placed into the State Coordinated Review Process.[12] 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.[13]

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.[14]

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;[15]

[7] Section 163.3177(6)(a), F.S.
[8] *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.
[9] Sections 163.3174(4)(a) and 163.3184, F.S.
[10] Section 163.3184, F.S.
[11] Chapter 2011-139, s. 17, Laws of Fla.
[12] *Id.*
[13] Section 163.3184(3), (4), F.S.
[14] *See* sections 125.66(4) and 166.041(3), F.S.
[15] 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.

- 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;[16]
- 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;[17]
- 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.[18]

Statutory Guidance on County and Municipal Affordable Housing

In 2001, the Legislature created ss. 125.01055[19] and 166.04151, F.S.,[20] 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 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." [21]

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[22]

Pursuant to home rule authority, counties and municipalities may impose proprietary fees,[23] regulatory fees, and special assessments[24] 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.[25] Impact fee calculations vary from jurisdiction to jurisdiction and from fee to fee.

[16] 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.
[17] Section 420.0004(11), F.S.
[18] Section 420.0004(12), F.S.
[19] Chapter 2001-252, s. 16, Laws of Fla.
[20] Chapter 2001-252, s. 15, Laws of Fla.
[21] *Ross, J.* and *Outka, U.*, The Florida Housing Coalition, *Inclusionary Housing: A Challenge Worth Taking*, *available at* https://www.flhousing.org/wp-content/uploads/2012/05/Inclusionary-Housing-A-Challenge-Worth-Taking.pdf (last visited February 13, 2020).
[22] 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 February 13, 2020).
[23] *Id.* Examples of proprietary fees include admissions fees, franchise fees, user fees, and utility fees.
[24] *Id.* Special assessments are typically used to construct and maintain capital facilities or to fund certain services.
[25] *Id*.

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

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.[28] 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.[29] 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 DFS a copy of its annual financial report (AFR) for the previous fiscal year no later

[26] Section 163.31801(3)(f) and (g), F.S.
[27] Section 163.31801(3)(e), F.S.
[28] Section 163.31801(3)(h) and (i), F.S.
[29] Section 163.31801(8), F.S.

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.[30]

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.[31] 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.[32]

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

Effect of Proposed Changes

Sections 1 and 4 amend ss. 125.01055 and 166.04151, F.S., to -- notwithstanding any other law or local ordinance or regulation to the contrary -- authorize the board of a county commission and the governing body of a municipality, respectively, to approve the development of affordable housing on any parcel zoned for residential, commercial, or industrial use.

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 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.[33] 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

[30] 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 (last visited February 13, 2020).
[31] LOGER is *available at* https://apps.fldfs.com/LocalGov/Reports/ (last visited February 13, 2020).
[32] *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 (last visited February 13, 2020).
[33] 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.

residential use based upon a finding that there is a shortage of affordable rentals in its jurisdiction.[34] 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.[35] 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.[36]

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.*[37] 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 ADU in their land development codes; and
- Of the 15 most populous cities in Florida, 11 of them explicitly allow ADUs in single-family districts.

Effect of Proposed Changes

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

Property Taxation (Section 5 and 6)

Present Situation

The ad valorem tax or "property tax" is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of January 1 of each year.[38] The property appraiser annually determines the "just value"[39] of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property's "taxable value."[40] Tax bills are mailed in November of each year based on the previous January 1 valuation and payment is due by March 31.

[34] Section 163.31771(3), F.S.
[35] Section 163.31771(5), F.S.
[36] Section 163.31771(4), F.S. The parameters defining the various income designations are specified in s 420.0004, F.S.
[37] *See* Florida Housing Coalition, *Accessory Dwelling Unit Guidebook*, (May 2019) *available at* https://www.flhousing.org/wp-content/uploads/2019/08/ADU-Guidebook.pdf (last visited February 13, 2020).
[38] Both real property and tangible personal property are subject to tax. Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.
[39] Property must be valued at "just value" for purposes of property taxation, unless the Florida Constitution provides otherwise (FLA. CONST. art VII, s. 4). Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm's-length transaction. *See Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).
[40] *See* s. 192.001(2) and (16), F.S.

The Florida Constitution prohibits the state from levying ad valorem taxes[41] and limits the Legislature's authority to provide for property valuations at less than just value, unless expressly authorized.[42]

The just valuation standard generally requires the property appraiser to consider the highest and best use of property;[43] however, the Florida Constitution authorizes certain types of property to be valued based on their current use (classified use assessments), which often result in lower assessments. Properties that receive classified use treatment in Florida include: agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes;[44] land used for conservation purposes;[45] historic properties when authorized by the county or municipality;[46] and certain working waterfront property.[47]

Exemption of Property Tax for Charitable Purposes and Affordable Housing

The Florida Constitution provides that portions of property used predominately for educational, literary, scientific, religious, or charitable purposes may be exempted by general law from taxation.[48]

In 1999, the Legislature authorized a property tax exemption for property owned by certain exempt entities which provide affordable housing under the charitable purposes exemption.[49] The property must be owned entirely by a not-for-profit corporation, used to provide affordable housing through any state housing program under ch. 420, F.S., and serving low-income and very-low-income persons.[50] In order to qualify for the exemption, the property must comply with s. 196.195, F.S., for determining non-profit status of the property owner and s. 196.196, F.S., for determining exempt status of the use of the property.

In 2017, the Legislature created s. 196.1978(2), F.S., to provide that property used as affordable housing will be considered a charitable purpose and qualify for a 50 percent property tax discount if the property:

- Provides affordable housing to natural persons or families meeting the extremely-low, very-low, or low-income limits specified in s. 420.0004, F.S.;
- Provides housing in a multifamily project in which at least 70 units are provided to the above group; and

[41] FLA. CONST. art. VII, s. 1(a).
[42] *See* FLA. CONST. art. VII, s. 4.
[43] Section 193.011(2), F.S.
[44] FLA. CONST. art. VII, s. 4(a).
[45] FLA. CONST. art. VII, s. 4(b).
[46] FLA. CONST. art. VII, s. 4(e).
[47] FLA. CONST. art. VII, s. 4(j).
[48] FLA. CONST. art. VII, s. 3.
[49] Chapter 99-378, s. 15, Laws of Fla. (creating s. 196.1978, F.S, effective July 1, 1999).
[50] The not-for-profit corporation must qualify as charitable under s. 501(c)(3) of the Internal Revenue Code and other federal regulations. See 26 U.S.C. § 501(c)(3) ("charitable purposes" include relief of the poor, the distressed or the underprivileged, the advancement of religion, and lessening the burdens of government).

- Is subject to an agreement with FHFC to provide affordable housing to the above group, recorded in the official records of the county in which the property is located.[51]

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

Effect of Proposed Changes

Section 5 amends s 196.196, F.S., to provide that property owned by a person, made available for affordable housing may be granted an ad valorem exemption, and provides that the board of county commissioners of any county or the governing authority of a municipality may adopt ordinances to grant an ad valorem tax exemption for property used for the charitable purpose of providing affordable housing, if the person owning the property has taken affirmative steps to prepare the property to provide affordable housing to persons or families that meet the extremely-low-income, very-low-income, low-income, or moderate-income limits.

Section 6 amends s. 196.1978, F.S., provides that units which are vacant or that are occupied by tenants who were natural persons or families meeting the extremely-low-income, very-low-income, low-income, or moderate-income limits at the time they initially became tenants, but who no longer meet those income limits, will be treated as portions of the property exempt from ad valorem taxation provided that the property is subject to a recorded land use restriction agreement in favor of the FHFC or any other governmental or quasi-governmental jurisdiction.

In addition, it provides that the Legislature intends that any property owned by one or more limited liability companies or limited partnerships, each of which is a disregarded entity for federal income tax purposes pursuant to Treasury Regulation 301.7701-3(b)(1)(ii) will be treated as owned by the ultimate sole member s. 501(c)(3) nonprofit corporation.

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

Present Situation

The SAIL Program[52] 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.

[51] Section 196.1978(2)(a), F.S. and ch. 2017-36, s. 6, Laws of Fla.
[52] *See* s. 420.5087, F.S., and Florida Housing Finance Corporation, *State Apartment Incentive Loan, Background*, for information cited in this section, *available at* http://www.floridahousing.org/programs/developers-multifamily-programs/state-apartment-incentive-loan (last visited February 13, 2020).

The FHFC administers the SAIL program and is required to establish a review committee for the competitive evaluation and selection of applications submitted. The evaluation criteria include local government contributions and local government comprehensive planning and activities that promote affordable housing.[53]

Effect of Proposed Changes

Section 12 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 13)

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 in high-cost and high-growth counties. Designed to use regulatory incentives and state and local funds to promote local public-private partnerships and to leverage government and private sources, the FHFC administered the program in 2006 and 2007.[54]

The CWHIP targeted households earning higher incomes than traditionally served through other affordable housing programs to create homeowner or rental housing for persons such as teachers, firefighters, healthcare providers and others as defined by local governments. Households earning up to 140 percent of area median income (AMI) could be served through the program with that provision rising up to 150 percent of AMI in the Florida Keys.[55]

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 percent of units for workforce housing and at least 50 percent for essential services personnel.

The CWHIP loans were awarded with a one to three percent interest rate and could be forgiven where long-term affordability was provided and where at least 80 percent of the units are set aside for workforce housing and at least 50 percent of the units are set aside for essential services.[56]

[53] Section 420.5087(6)(c), F.S.
[54] Section 420.5095(2), F.S.
[55] Section 420.5095(3)(a), F.S.
[56] Section 420.5095(11), F.S.

The FHFC administered two rounds of funding for CWHIP: $50 million in October of 2006 and $62.4 million in December of 2007.[57]

Effect of Proposed Changes

Section 13 amends s. 420.5095, F.S., to transition the "pilot" features of a workforce housing program into the Community Workforce Housing Loan Program, administered by the FHFC. 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. The FHFC is required to establish a loan application process pursuant to the SAIL Program provisions under s. 420.5087, F.S., and award loans at a one percent interest rate for a term not to exceed 15 years. The bill removes the requirement that projects set aside at least 50 percent of units for workforce housing to be given priority consideration for funding.

Affordable Housing Workshops for Locally Elected Officials utilizing Catalyst and the SHIP (Sections 14 and 17)

Present Situation

Affordable Housing Catalyst Program

Section 420.531, F.S., directs the FHFC to operate the Affordable Housing Catalyst Program (Catalyst Program) to provide specialized technical support to local governments and community-based organizations to implement the HOME Investment Partnership Program, the SHIP Program, and other affordable housing programs.[58] The FHFC currently contracts with the Florida Housing Coalition to provide Catalyst Program training and technical assistance.[59]

The Florida Housing Coalition's technical assistance team consists of a geographically dispersed network of personnel who provide on-site and telephone or e-mail technical assistance as well as training through workshops and webinars.[60] 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;

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[57] *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 (last visited February 13, 2020).

[58] 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.

[59] *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 (last visited February 13, 2020).

[60] 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 February 13, 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* (last visited February 13, 2020).

- 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

Administered by FHFC, 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.[61] The program targets very-low, low, and moderate-income families. The 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.[62] Funds are expended per each local government's adopted Local Housing Assistance Plan (LHAP), which details the housing strategies they will use.[63] Local governments submit their LHAPs to the FHFC for review to ensure that they meet the broad statutory guidelines and the requirements of the program rules. The FHFC must approve an LHAP before a local government may receive the SHIP funding 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.[64] 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.[65]

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.[66] The AHAC is comprised of local citizens representing a range of affordable housing stakeholders.[67] 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.

[61] *See* ss. 420.907-420.9089, F.S.
[62] Section 420.9073, F.S.
[63] Section 420.9075, F.S.
[64] Section 420.9076(1), F.S.
[65] Section 420.9071(16), F.S.
[66] Section 420.9076(4), F.S.
[67] Section 420.9076(2), F.S.

- The allowance of affordable accessory residential units in residential zoning districts.
- The reduction of parking and setback requirements for affordable housing.

Local governments that receive the minimum allocation under the SHIP[68] 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.[69] 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. The FHFC provides administrative support to the Commission, but the Commission has not received funding or gubernatorial appointments since 2008.[70]

The 2017 Legislature created a statewide Affordable Housing Workgroup (Workgroup).[71] 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.[72]

Effect of Proposed Changes

Section 14 amends s. 420.531, F.S., to establish biannual regional workshops for locally elected officials serving on AHACs as provided for by the 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 the FHFC by March 31 of the following year.

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

[68] Pursuant to s. 420.9073(3), F.S., the minimum local housing distribution is $350,000.
[69] Chapter 86-192 Laws of Fla.
[70] Commission Annual Reports submitted from 1987-2008 are *available at* http://apps.floridahousing.org/StandAlone/AHSC/AHSC-AnnualReports.htm (last visited February 13, 2020).
[71] Chapter 2017-071, s. 46, Laws of Fla. Legislation creating the workgroup designated Florida Housing Finance Corporation as the administering entity.
[72] 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 February 13, 2020).

Section 17 amends s. 420.9076, F.S., to modify requirements of the SHIP AHACs. 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, the FHFC 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, AHAC 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.

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

Present Situation

Affordable Housing Funding for Special Needs Populations

> Section 420.0004, F.S., defines a person with special needs asan 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 program or the Supplemental Security Income 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 the 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.[73] 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 the FHFC to reserve up to five percent of certain annual allocations[74] for high-priority affordable housing projects for veterans and their families, and other special needs populations. The FHFC must reserve an additional five 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

[73] Section 420.9075(5)(d), F.S.

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

statewide.[75] 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.[76]

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.[77]

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

Effect of Proposed Changes

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

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

Present Situation

Section 420.9075(10), F.S., requires each local government participating in the SHIP (see page 10 of the analysis for a summary of the general elements and governance of the SHIP) to annually submit a report of its affordable housing programs and accomplishments to the FHFC. The local government's chief elected official or his or her designee must certify the report as accurate and complete.[78] 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;

[75] Shimberg Center for Housing Studies, University of Florida, 2019 Rental Market Study (May 2019) *available at* http://www.shimberg.ufl.edu/publications/RMS_2019.pdf (last visited February 13, 2020). The Rental Market Study defines 'cost burdened' to mean the household is paying at least 40 percent of income toward gross rent.
[76] *Id.*
[77] 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 February 13, 2020).
[78] 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.

- By income category, the number of mortgages made, the average mortgage amount, and the rate of default; and
- A description of the status of implementation of each local housing incentive strategy.[79]

If, as a review of the report, the FHFC determines a violation of the criteria for a LHAP or that an eligible sponsor or eligible person has violated the applicable award conditions, the FHFC reports the violation to its compliance monitoring agent and the Executive Office of the Governor.[80] If a violation is deemed to have occurred, the distribution of program funds to the local government must be suspended until the violation is corrected.[81]

Effect of Proposed Changes

Section 16 amends s. 420.9075, 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 the FHFC.

Housing Projects (Section 18)

Present Situation

Public Housing Authorities

The state role in housing and urban development is outlined in part I of ch. 421, F.S., (Housing Authorities Law), ch. 422, F.S., (Housing Cooperation Law), and ch. 423, F.S., (Tax Exemption of Housing Authorities).[82] Section 421.02, F.S., finds that there is a shortage of safe or sanitary dwelling accommodations available at rents that persons of low income can afford. To provide such accommodations housing authorities may acquire property to be used for or in connection with housing projects. Public money may only be spent to acquire private property for exclusively public uses and purposes, and the purposes must be determined to be governmental functions of public concern.

City, County, and Regional Housing Authorities

Florida Statutes provide for the creation of special district, city, county and regional housing authorities. Of the 119 public housing authorities in Florida,[83] 116 are special districts.[84]

The determination of the need for a city housing authority may be made by the governing body of a city or upon the filing of a petition signed by 25 city residents. The mayor, with the approval of the governing body, appoints no fewer than five and no more than seven persons as commissioners of the authority.[85] The powers of each authority are vested in the commissioners

[79] Section 420.5075(10), F.S.
[80] Section 420.9075(13), F.S.
[81] *Id.*
[82] The Department of Economic Opportunity is the state agency charged with the responsibility of this state role.
[83] Florida Housing Finance Corporation, *Public Housing Question* (February 18, 2020), on file with the Senate Committee on Infrastructure and Security.
[84] Florida Department of Economic Opportunity, *Official List of Special Districts Online*, available at http://specialdistrictreports.floridajobs.org/webreports/sumfunctionlist.aspx (last visited February 18, 2020).
[85] At least one commissioner must be a resident of a housing project or a person of low income who resides within the housing authority's jurisdiction and is receiving a rent subsidy. *See* s. 421.05(1), F.S.

and action may be taken upon a majority vote of the commissioners. No commissioner or employee of an authority may acquire any interest in any housing project or in any property included or planned to be included in any project, nor in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project.[86]

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

- The power to acquire, lease, and operate housing projects,
- The power to provide for the construction, reconstruction, improvement, alteration, or repair of any housing project,
- The power to lease or rent any dwellings, houses, accommodations, lands, buildings, structures, or facilities embraced in any housing project, and
- The power to invest any funds held in reserves or sinking funds.

Section 421.08(8)(a), F.S., grants the power to organize for the purpose of creating a for-profit or not-for-profit corporation, limited liability company, or other similar business entity pursuant to all applicable laws of this state in which the housing authority may hold an ownership interest or participate in its governance in order to develop, acquire, lease, construct, rehabilitate, manage, or operate multifamily or single-family residential projects. These projects may include nonresidential uses and may use public and private funds to serve individuals or families who meet the applicable income requirements of the state or federal program involved; whose income does not exceed 150 percent of the applicable median income for the area, as established by the United States Department of Housing and Urban Development; and who, in the determination of the housing authority, lack sufficient income or assets to enable them to purchase or rent a decent, safe, and sanitary dwelling. These corporations, limited liability companies, or other business entities may join partnerships, joint ventures, or limited liability companies pursuant to applicable laws or may otherwise engage with business entities in developing, acquiring, leasing, constructing, rehabilitating, managing, or operating such projects.

Section 421.27, F.S., governs the creation and powers of county housing authorities, which is similar to the creation of city housing authorities.[87] A county housing authority's area of operation includes all of the county except that portion which lies within the territorial boundaries of any city as defined in the Housing Authorities Law. A regional housing authority may be created by two or more contiguous counties if a regional entity would be a more economically or administratively efficient unit.[88] The powers of a regional housing authority are analogous to those of a city or county housing authority.

Tax Exemption of Housing Authorities

Chapter 423, F.S., provides property tax exemptions as well as state and local government tax and assessment exemptions for housing authorities. Specifically, s. 423.01(4), F.S., provides that such housing projects, including all property of a housing authority used for or in connection therewith or appurtenant thereto, are exclusively for public uses and municipal purposes and not for profit, and are governmental functions of state concern. As a matter of legislative

[86] *See* s. 421.06, F.S.
[87] In counties, petitions must be signed by 25 county residents and the Governor appoints the commissioners.
[88] *See* s. 421.28, F.S. The Governor appoints commissioners pursuant to s. 421.30, F.S.

determination, it is found and declared that the property and debentures of a housing authority are of such character as may be exempt from taxation.

Section 423.02, F.S., provides that housing projects of housing authorities, including authority property used in connection with or appurtenant to a housing project, shall be exempt from all taxes and special assessments of the state or any city, town, county, or political subdivision of the state.[89]

Effect of Proposed Changes

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

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.[90] The provisions in ch. 723, F.S., apply to residential tenancies where a mobile home is placed upon a lot that is rented or leased from a mobile home park that has ten or more lots offered for rent or lease.[91]

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.[92]
- "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.[93]

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.[94] If the fee is not paid by December 31, a penalty of ten percent of the amount due must be assessed. Additionally,

[89] In lieu of such taxes or special assessments a housing authority may agree to make payments to a local government for services, improvements or facilities furnished by the entity for the benefit of a housing project owned by the housing authority.
[90] Section 723.004, F.S.
[91] Section 723.002(1), F.S.
[92] Section 723.003(12), F.S.
[93] Section 723.003(11), F.S.
[94] Section 723.007(1), F.S.

if the fee is not paid, the park owner does not have standing to maintain or defend any action in in court until the amount due, plus any penalty, is paid.[95]

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.[96]

Mobile Home Dealer Display Requirements (Section 7)

Present Situation

A mobile home dealer must hold a license issued by the Department of Highway Safety and Motor Vehicles (DHSMV).[97] 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.[98] 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.[99]

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.[100]

Effect of Proposed Changes

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

Recreational Vehicle Dealer Requirements (Section 7)

Present Situation

A recreational vehicle dealer must hold a license issued by the DHSMV.[101] The term "dealer" means any person engaged in the business of buying, selling, or dealing in recreational vehicles or offering or displaying recreational vehicles for sale. The term does not include banks, credit unions, and finance companies that acquire recreational vehicles as an incident to their regular business and does not include mobile home rental and leasing companies that sell recreational vehicles to dealers licensed under this section.

[95] *Id.*
[96] Section 723.007(2), F.S.
[97] Section 320.77(2), F.S.
[98] *See* s. 320.77(1)(b), F.S., defining the term "mobile home broker."
[99] Section 320.77(1)(a), F.S.
[100] Section 320.77(3)(h), F.S.
[101] Section 320.771(2), F.S.

A recreational vehicle is a type of motor vehicle primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle.[102] One type of a recreational vehicle is known as a "park trailer," which is a transportable unit that has a body width not exceeding 14 feet and which is built on a single chassis and is designed to provide seasonal or temporary living quarters when connected to utilities necessary for operation of installed fixtures and appliances.[103]

A recreational vehicle dealer must be insured under a garage liability insurance policy that includes a minimum $25,000 combined single-limit liability coverage, including bodily injury and property damage protection, and $10,000 personal injury protection.[104]

Effect of Proposed Changes

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

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

Present Situation

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 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.

[102] *See* s. 320.01(1)(b), F.S.
[103] Section 320.01(1)(b)7., F.S.
[104] Section 320.771(3)(j), F.S.

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.

The DHSMV Rule 15C-2.0081 of the Florida Administrative Code (F.A.C.) entitled "Mobile/Manufactured Home Repair and Remodeling Code," provides guidelines which must be used to assure safe and livable housing and which must not be more stringent than the standard to which the home was originally constructed. The guidelines provide that:

- Additions, including, but not limited to add-a-rooms, roof-overs and porches must be free standing and self-supporting with only the flashing attached to the main unit unless the added unit has been designed to be married to the existing unit. All additions must be constructed in compliance with State and locally adopted building codes;
- Anchoring of additions must be in compliance with requirements for similar type construction;
- Repair or remodeling of a mobile/manufactured home shall require the use of material and design equivalent to the original construction. Structure must include, but not be limited to, roof system, walls, floor system, windows and exterior doors of the mobile/manufactured home; and
- Electrical and plumbing repair and replacement shall require the use of material and design equivalent to the original construction.

Effect of Proposed Changes

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

Section 10 amends s. 320.8232, F.S., 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.[105]

[105] Department of Highway Safety and Motor Vehicles, Agency Bill Analysis of SB 998 (February 12, 2020) (on file with the Senate Committee on Infrastructure and Security), the DHSMV presumes this is a reference to Rule 15C-2.0081, F.A.C.

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

Present Situation

In various areas throughout Florida, water and wastewater services are provided through privately-owned and operated water and wastewater companies. These privately-owned companies are referred to as "investor-owned utilities," or "IOUs."[106]

For IOUs operating within a single Florida county, the county has the option to regulate rates and service or allow the PSC to regulate those utilities.[107] Currently, the PSC has jurisdiction over 150 water and wastewater IOUs in 38 of 67 counties in Florida.[108]

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).[109]

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;[110]
- "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;[111]
- "Lot rental amount" means all financial obligations, except user fees, which are required as a condition of the tenancy; and[112]
- "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

[106] 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.
[107] 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.
[108] *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 February 13, 2020).
[109] *See* s. 367.022, F.S.
[110] Section 723.003(14), F.S.
[111] Section 723.003(10), F.S.
[112] Section 723.003(6), F.S.

owner under a separate written agreement between the mobile home owner and the person furnishing the optional service or services.[113]

Effect of Proposed Changes

Section 11 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.

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

Present Situation

Prospectus

The prospectus in a mobile home park is the document that governs the landlord-tenant relationship between the park owner and the mobile home owner.***[114]*** The prospectus or offering circular, together with its attached exhibits, is a disclosure document intended to afford protection to homeowners and prospective homeowners in a mobile home park. The purpose of the document is to disclose the representations of the mobile home park owner concerning the operations of the mobile home park.[115]

The prospectus must include the information specified in s. 723.012(4), F.S., including a description of the mobile home park property, including, but not limited to:

- The number of lots in each section, the approximate size of each lot, the setback requirements, and the minimum separation distance between mobile homes as required by law.
- The maximum number of lots that will use shared facilities of the park; and, if the maximum number of lots will vary, a description of the basis for variation.

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

If the tenancy was in existence on the effective date of ch. 723, F.S., (June 4, 1984),[116] "the prospectus or offering circular offered by the mobile home park owner shall contain the same terms and conditions as rental agreements offered to all other mobile home owners residing in the park on the effective date of this act, excepting only rent variations based upon lot location and size, and shall not require any mobile home owner to install any permanent improvements."

[113] Section 723.003(21), F.S.
[114] Section 723.012, F.S.
[115] Section 723.011(3), F.S.
[116] See Chapter 84-80, Laws of Fla. The provisions that were to become ch. 723, F.S., were enacted under ch. 720, F.S., with an effective date of upon becoming law, unless otherwise provided. Chapter 84-80, Laws of Fla., was approved by the Governor and filed with the Secretary of State on June 4, 1984, and was codified under ch. 723, F.S. The provision codified in s. 723.011(4), F.S., was enacted by the Legislature under s. 720.302 (3), F.S., with an effective date of January 1, 1985, for mobile home parks containing 100 spaces or more and July 1, 1985, for mobile home parks containing less than 100 spaces.

In a mobile home park containing 26 or more lots, the park owner must file a prospectus with the division for approval.[117] The division maintains copies of each prospectus and all amendments to each prospectus that it has approved.[118]

The park owner must provide a copy of the prospectus with exhibits to each prospective lessee prior to the execution of the lot rental agreement or at the time of occupancy, whichever occurs first. The lot rental agreement is voidable by the lessee for a period of 15 days after receipt.[119]

By rule of the division, the prospectus distributed to a home owner or prospective home owner is binding for the length of the tenancy, including any assumptions of that tenancy, and may not be changed except in certain specified circumstances.[120]

Mobile Home Lot Rental Agreements

Rental agreements in a mobile home park must be consistent with ch. 723, F.S.[121] The provisions of ch. 723, F.S., are deemed to apply to every tenancy in a mobile home park whether or not a tenancy is covered by a valid written rental agreement.[122]

Park owners are prohibited from offering a rental agreement for a term of less than one year.[123] If there is no written rental agreement, the rental term may not be less than one year from the date of initial occupancy. The initial term may be less than 1 year in order to permit the park owner to have all rental agreements within the park commence at the same time. Thereafter, all terms must be for a minimum of one year.[124]

Effect of Proposed Changes

Section 19 amends s. 723.011, F.S., to provide that a mobile home owner may be required to install permanent improvements to the mobile home as disclosed in the prospectus.

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

[117] Section 723.011(1)(a), F.S.
[118] Section 723.011(1)(d), F.S.
[119] Sections 723.011(2) and 723.014(1), F.S.
[120] *See* Rule 61B-31.001, F.A.C.
[121] Section 723.031(1), F.S.
[122] *Id.* at (2).
[123] Section 723.031(4), F.S.
[124] *Id.*

Mobile Home Owner's General Obligations (Section 21)

Present Situation

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

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

Effect of Proposed Changes

Section 21 amends s. 723.023, F.S., to require the mobile home owner to:

- Receive written approval from the mobile home park owner before making any exterior modification or addition to the home.
- Remove any debris and other property of any kind which is left on the mobile home lot when vacating the premises.

Mobile Home Park Rent Increases (Sections 22 and 23)

Present Situation

A purchaser of a mobile home has the right to assume the remainder of the term of any rental agreement in effect between the mobile home park owner and seller.[125] The purchaser is also entitled to rely on the terms and conditions of the prospectus or offering circular as delivered to the initial recipient.[126]

The mobile home park owner may increase the rental amount upon the expiration of the assumed rental agreement "in an amount deemed appropriate by the mobile home park owner."[127] The park owner must give affected mobile home owners and the board of directors of the homeowners' association, if one has been formed, at least a 90-day notice of a lot rental increase.[128]

The amount of the lot rental increase must be disclosed to the purchaser of a mobile home and agreed to in writing by the purchaser.[129] Lot rental increases may not be arbitrary or discriminatory between similarly situated tenants in the park, and the lot rental may not increase

[125] Section 723.059(3), F.S.
[126] *Id.*
[127] Section 723.059(4), F.S.
[128] Section 723.037(1), F.S.
[129] Section 723.031(5), F.S.

during the term of the rental agreement.[130] However, the mobile home park owner may pass on, at any time during the term of the rental agreement, ad valorem property taxes and utility charges, or increases of either, if the passing on of these costs was disclosed prior to the tenancy.[131]

A park owner is deemed to have disclosed the passing on of ad valorem property taxes and non-ad valorem assessments if ad valorem property taxes or non-ad valorem assessments were disclosed as a factor for increasing the lot rental amount in the prospectus or rental agreement.[132]

A park owner must give written notice to each affected mobile home owner and the board of directors of the homeowners' association, if one has been formed, at least 90 days before any increase in lot rental amount or reduction in services or utilities provided by the park owner or change in rules and regulations. [133] The notice must identify all other affected homeowners, which may be by lot number, name, group, or phase. If the affected homeowners are not identified by name, the park owner shall make the names and addresses available upon request.[134]

A committee of no more than five people, designated by a majority of the owners or by the board of directors of the homeowners' association (if formed), and the park owner must meet no later than 60 days before the effective date of a rent increase to discuss the reasons for the increase.[135] Current law does not specify that the five members of the committee must be mobile home owners in the park. At the meeting, the park owner or subdivision developer must in good faith disclose and explain all material factors resulting in the decision to increase the lot rental amount, reduce services or utilities, or change rules and regulations, including how those factors justify the specific change proposed.[136]

If the meeting does not resolve the issue, then additional meetings may be requested. If subsequent meetings are unsuccessful, within 30 days of the last scheduled meeting, the mobile home owners may petition the division to initiate mediation.[137] If the mediation does not successfully resolve the dispute, then the parties may file an action in circuit court to challenge the rental increase as unreasonable.[138]

Effect of Proposed Changes

Section 22 amends s. 723.031, F.S., to require, upon the sale of a mobile home on a rented lot, the amount of a lot rental increase to be disclosed and agreed to by the purchaser by executing a rental agreement setting forth the new lot rental amount. Current law requires that such a disclosure and agreement must be in writing but does not specify that the written disclosure and agreement must be executed.

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[130] *Id.*
[131] Section 723.031(5)(c), F.S.
[132] *Id.*
[133] *Supra*, note 136.
[134] *Id.*
[135] Section 723.037(4)(a), F.S.
[136] Section 723.037(4)(b), F.S.
[137] Section 723.037(5)(a), F.S.
[138] Section 723.0381, F.S.

In addition, the bill requires ad valorem property taxes or non-ad valorem assessments be disclosed in the prospectus or rental agreement as a separate charge in order for a park owner to be deemed to have disclosed the passing on of ad valorem property taxes and non-ad valorem assessments. The bill prohibits a park owner from charging or collecting from the mobile home owners any sum of ad valorem taxes or non-ad valorem taxes in an amount in excess of the sums remitted by the park owner to the tax collector.

Section 23 amends s. 723.037, F.S., to permit the park owner to give notice of all rent increases for multiple anniversary dates in the same 90-day notice. It also provides that the requirement that the park owner must make available, upon request, the identifying information for homeowners affected by a rent increase does not authorize the park owner to release the names, addresses, or other private information of the homeowners to the association or any other person for any other purpose.

In addition, the bill provides that the committee designated as provided under current law by a majority of the affected mobile home owners, or by the board of directors of the homeowners' association, must address all lot rental amount increases that are specified in the notice of lot rental amount increase, regardless of the effective date of the increase.

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

Present Situation

Except as expressly preempted by the requirements of the DHSMV, a mobile home owner or the park owner 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."[139]

Effect of Proposed Changes

Section 24 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, and 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.

Park Owner Disclosures Prior to Residence (Section 25)

Present Situation

A mobile home park owner or developer may not require a person, as a precondition to occupancy in the mobile home park, to provide any improvement unless the requirement is disclosed pursuant to s. 723.011, F.S, which requires the park owner to deliver a prospectus to the prospective homeowner before the rental of a mobile home lot.[140]

[139] Section 723.041(4), F.S.
[140] Section 723.011(2), F.S.

In a mobile home park containing 26 or more lots, the park owner shall file a prospectus with the division.[141] The prospectus must include a "description of all improvements, whether temporary or permanent, which are required to be installed by the mobile home owner as a condition of his or her occupancy in the park."[142]

Effect of Proposed Changes

Section 25 amends s. 723.042, F.S., to provide a mobile home park owner or developer may not require a person, as a precondition to occupancy in the mobile home park, to provide any improvement unless the requirement is disclosed pursuant to s. 723.012 (7), F.S., which pertains to the prospectus as well as the offering circular.

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

Present Situation

The purchaser of a mobile home has the right to assume the remainder of the term of any rental agreement in effect between the mobile home park owner and the seller. The purchaser is entitled to rely on the terms and conditions of the prospectus or offering circular as delivered to the initial recipient.[143]

Upon the expiration of the assumed rental agreement, the mobile home park owner may increase the rental amount if the increase is disclosed to the purchaser prior to his or her occupancy and is imposed in a manner consistent with the initial offering circular or prospectus and ch. 723, F.S.[144]

Effect of Proposed Changes

Section 26 amends s. 723.059, F.S., so that a purchaser may no longer be entitled to rely on the terms and conditions of the prospectus or offering circular as delivered to the initial recipient. Instead the purchaser may assume the seller's prospectus. However, nothing will prohibit a mobile home park owner from offering the purchaser of a mobile home any approved prospectus.

Mobile Home Park Lot Termination of Tenancy (Section27)

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

[141] Section 723.011(1), F.S.
[142] Section 723.012(7), F.S.
[143] Section 723.059(3), F.S.
[144] Section 723.059(4), F.S.

- Failure to qualify as, and to obtain approval to become, a tenant or occupant of the home, if such approval is required by a properly promulgated rule.

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.[145] Delivery of the mailed notice shall be deemed given 5 days after the date of postmark.

Effect of Proposed Changes

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

In addition, the bill provides that a park owner does not waive the right to terminate the rental agreement or the right to bring a civil action for the noncompliance, if a park owner accepts payment for any portion of a lot rental amount with actual knowledge of noncompliance after notice and termination of the rental agreement. This provision applies to violations related to the tenant's 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. Any rent so received by the park owner must be accounted for at the final hearing.

Homeowners' Association Incorporation (Section 28)

Present Situation

In order to exercise the rights of a homeowners' association (association), mobile home owners must form an association that must be either a for-profit or not-for-profit corporation and of which not less than two-thirds of all the mobile home owners within the park must have consented in writing to become members or shareholders. The term "member" or "shareholder" means a mobile home owner who consents to be bound by the articles of incorporation, bylaws, and polices of the incorporated homeowners' association.[146]

Upon receiving its certificate of incorporation the association must notify the park owner in writing of its creation and must advise the park owner of the names and addresses of the association officers. This notice must be made by personal delivery upon the park owner's representative as designated in the prospectus or by certified mail, return receipt requested.[147]

[145] 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.
[146] Section 723.075(1), F.S.
[147] Section 723.076(1), F.S.

Effect of Proposed Changes

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

Homeowners' Association Bylaws (Section 29)

Present Situation

Voting Requirements and Proxies

Unless otherwise provided in the bylaws, 30 percent of the total membership is required to constitute a quorum for a meeting of the association.[148] A member may not vote by general proxy, but may vote by limited proxies substantially conforming to a limited proxy form adopted by the division. However, members may cast votes for association board members by limited or general proxy.[149] If a mobile home or subdivision lot is jointly owned, the owners of the mobile home or subdivision lot must be counted as one for the purpose of determining the number of votes required for a majority. Only one vote per mobile home or subdivision lot will be counted. Any number greater than 50 percent of the total number of votes constitutes a majority.[150]

Board of Directors' and Committee Meetings

Meetings of the board of directors and meetings of its committees at which a quorum is present must be open to all members. This requirement does not apply to meetings held for the purpose of discussing personnel matters or meetings with the association's attorney where the contents of the discussion would be governed by the attorney-client privilege.[151]

Member Meetings

The association must conduct at least one member meeting annually during which members of the board of the directors are elected. The association's bylaws may not restrict the nomination from the floor of any member desiring to be a candidate for board membership. All nominations from the floor must be made at a meeting of the members held at least 30 days before the annual meeting. Unless waived in writing, the notice of the annual meeting must be mailed, hand delivered, or electronically transmitted to each member to at least 14 days before the meeting. An officer of the association must provide an affidavit affirming that the notices were mailed or hand delivered to each member at the address last furnished to the corporation.[152]

Minutes of Meetings

The minutes of all meetings of members of the association, the board of directors, and a committee must be maintained in writing and approved by the members, board, or committee, as applicable. A vote or abstention from voting on each matter voted upon for each director present at a board meeting must be recorded in the minutes. The minutes of all meetings of members and

[148] Section 723.078(2)(b)1., F.S.
[149] Section 723.078(2)(b)2., F.S.
[150] *Id.*
[151] Section 723.078(2)(c), F.S.
[152] Section 723.078(2)(d), F.S.

of the board of directors must be maintained, available for inspection, and retained for at least seven years.[153]

Effect of Proposed Changes

Section 29 amends s. 723.078, F.S., to provide that a proxy may not be used in the election of board members in general elections or elections to fill vacancies caused by recall, resignation, or otherwise. Board members must be elected by written ballot or by voting in person.

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

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

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

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

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

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

<u>Board of Directors' and Committee Meetings</u>

The bill provides that meetings between the park owner and the board of directors or any of the board's committees are not subject to the requirement that meetings be open to the association members.

[153] Section 723.078(2)(e), F.S.

The bill clarifies that notices of all board or committee meetings open to association members must be posted in a conspicuous place upon the park property at least 48 hours in advance, except in an emergency.

Member Meetings

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

Minutes of Meetings

Under the bill, the minutes of board or committee meetings that are closed to members are privileged, confidential, and not available for inspection or photocopying.

The bill provides that minutes of meetings open for members of the board of directors must be maintained in writing. All minutes of open meetings must be retained within this state for a period of at least five years, rather than seven years as provided in current law.

Powers and Duties of Homeowners' Associations (Section 30)

Present Situation

The powers of the association include, but are not limited to, the maintenance, management, and operation of the park property.[154]The association must maintain the following items, when applicable, which constitute the official records of the association:[155]

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

The official records must be maintained within the state for at least seven years and must be made available to a member for inspection or photocopying within ten business days after receipt by the board or its designee of a written request submitted by certified mail, return receipt requested.[156]

Failure to provide access to the records creates a rebuttable presumption that the association willfully failed to comply with this section. A member who is denied access to official records is

[154] Section 723.079(1), F.S.
[155] Section 723.079(4)(a)-(i), F.S.
[156] Section 723.079(5), F.S.

entitled to the actual damages or minimum damages for the association's willful failure to comply. Minimum damages are $10 per day up to ten days and calculation begins on the 11th business day after receipt of the written request by certified mail, return receipt requested.

Effect of Proposed Changes

Section 30 amends s. 723.079, F.S., to include the approved minutes of meetings open for members, open for members of the board, and committees as part of the official association records and changes the length of retention from seven to five years. The bill specifies that insurance policies and contracts or agreements must be retained for at least five years after the expiration date of the policy or contract. The bill provides that financial and accounting records of the association must be maintained within this state for at least five years, and also specifies that all other written records must be retained within this state for at least five years or at least five years after the expiration date.

The bill requires that the association records be available for inspection by a member within 20 business days. Under the bill, an association member denied access to association records may recover only $10 per calendar day up to ten days, not to exceed $100, and the calculation for the damages begins on the 21st business day after the association receives the written request for records.

The bill provides that a dispute between a member and an association regarding inspecting or photocopying official records must be submitted to mandatory binding arbitration with the division, and the arbitration must be conducted pursuant to s. 723.1255, F.S., and procedural rules adopted by the division.

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

Present Situation

As required by statute, the division adopted rules of procedure governing binding arbitration for recall proceedings related to board members of a condominium, cooperative, or mobile home homeowner's association.[157]

Effect of Proposed Changes

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

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

[157] Rule 61B-50, F.A.C.

The bill directs the division to adopt rules of procedure to govern mandatory binding arbitration proceedings for the disputes specified in the bill.

Bill Sections Addressing Reenacting Issues and Effective Date

Effect of Proposed Changes

Section 32 reenacts a portion of s. 420.507, F.S., to incorporate the amending language in section 12 of the bill.

Section 33 reenacts a portion of s. 193.018, F.S., to incorporate the amending language in section 13 of the bill.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds, limit the ability of counties and municipalities to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

The bill provides that units which are vacant or that are occupied by tenants who were natural persons or families meeting the extremely-low-income, very-low-income, low-income, or moderate-income limits at the time they initially became tenants, but who no longer meet those income limits, will be treated as portions of the property exempt from ad valorem taxation provided that the property is subject to a recorded land use restriction agreement in favor of the FHFC or any other governmental or quasi-governmental jurisdiction.

The bill also includes a housing authority's nonprofit instrumentality under the housing authority's tax exemption from all taxes and special assessments of the state or any city, town, county, or political subdivision of the state. In addition, a city, town, county, or political subdivision of the state may not rename, modify terminology, or otherwise change a tax or assessment with the intent to circumvent the exemption, which must be interpreted broadly to protect housing authorities or their nonprofit instrumentalities from taxation or assessment.

Subsection (b) of s. 18, Art. VII of the Florida Constitution provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. The amount of revenue reduced due to the exemptions is unknown, therefore the impact to local government revenue is indeterminate. However, the mandates requirements do not apply

to laws having an insignificant impact,[158, 159] which is $2.2 million or less for Fiscal Year 2020-2021.[160]

Subsection (a) of s. 18, Art. VII of the Florida Constitution 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, enactment by vote of two-thirds of the membership in each house, expenditure is required to comply with a law that applies to all persons similarly situated, or the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement.

The bill's tax exemptions appear to apply to all similarly situated taxing authorities, and all are required to comply. However, the bill does not contain a finding of important state interest.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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.

B. Private Sector Impact:

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

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[158] FLA. CONST. art. VII, s. 18(d).

[159] An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year multiplied by $0.10. *See* Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), available at http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited January 23, 2020).

[160] Based on the Demographic Estimating Conference's population adopted on July 8, 2019. The conference packet is available at http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf (last visited January 23, 2020).

C. Government Sector Impact:

The state or any city, town, county, or political subdivision of the state may see a negative fiscal impact. The bill includes a housing authority's nonprofit instrumentality under the housing authority's tax exemption from all taxes and special assessments of the state or any city, town, county, or political subdivision of the state. In addition, a city, town, county, or political subdivision of the state may not rename, modify terminology, or otherwise change a tax or assessment with the intent to circumvent the exemption, which must be interpreted broadly to protect housing authorities or their nonprofit instrumentalities from taxation or assessment.

The Catalyst Program will incur new costs related to the administration of regional affordable housing workshops for locally elected officials as specified in sections 14 and 17 in the bill. The statewide regional affordable housing workshops for training and technical assistance may cost approximately $73,000 to $107,000, depending on the number of regions and whether the method of delivery is by teleconference or in person.[161]

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DHSMV analysis of the bill indicates lines 407-416 requires the Mobile and Manufactured Home Repair and Remodeling Code to "be a uniform code[.]" Presumably, this language references Rule 15C-2.0081, F.A.C. The proposed language does not specify what must be "uniform" or with what 15C-2.0081, F.A.C. must conform. Additionally, if the proposed changes to s. 320.8232 are enacted, it is unclear whether the title of s. 320.8232 should be amended ..."[162]

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 125.01055, 163.31771, 163.31801, 166.04151, 196.196, 196.1978, 320.77, 320.771, 320.822, 320.8232, 367.022, 420.5087, 420.5095, 420.531, 420.9073, 420.9075, 420.9076, 423.02, 723.011, 723.012, 723.023, 723.031, 723.037, 723.041, 723.042, 723.059, 723.061, 723.076, 723.078, 723.079, 723.1255, 420.507, and 193.018.

[161] E-mail from Kody Glazer, Legal Director, Florida Housing Coalition, *Senate Bill 998: Cost Estimate of Proposed Catalyst Additions* (Feb. 14, 2020) (on file with the Senate Committee on Infrastructure and Security).
[162] Department of Highway Safety and Motor Vehicles, Agency Bill Analysis of SB 998 (February 12, 2020) (on file with the Senate Committee on Infrastructure and Security),

IX. Additional Information:

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

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

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

CS by Community Affairs on January 13, 2020:

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

- Removes some cross references and statutory reenactments made unnecessary by the other changes in the bill.
- Clarifies provisions exempting mobile home park owners from the jurisdiction of the PSC when they provide water and wastewater.

B. Amendments:

None.