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 Community Affairs

BILL:	SB 998
INTRODUCER:	Senator Hutson
SUBJECT:	Housing
DATE:	January 9, 2020
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Ryon	CA	**Pre-meeting**
2.			IS	
3.			RC	

I. Summary:

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

With respect to zoning, permitting, and affordable housing, the bill:

- Notwithstanding other laws and regulations, authorizes local governments to approve the development of affordable housing on any parcel zoned for residential, commercial or industrial use.
- Requires local governments to adopt an ordinance to allow accessory dwelling units in any area zoned for residential use.
- Prohibits local governments from collecting impact fees and specified other fees and for the development or construction of affordable housing.
- Requires the reporting of impact fee charges data within the annual financial audit report submitted to the Department of Financial Services.
- Establishes a new process, specifically for affordable housing, for local government approvals of development permits, construction permits, or certificates of occupancy.
- Requires the evaluation of additional local government contribution criteria within applications submitted for State Apartment Incentive Loan Program funding.
- Transitions the "pilot" features of a workforce housing program into the Community Workforce Housing Loan Program, administered by The Florida Housing Finance Corporation.
- Requires each rental development receiving funding authorized by ch. 420, F.S., to establish a resident homeownership opportunity financial incentive program.
- Establishes quarterly regional workshops for locally elected officials serving on affordable housing advisory committees to identify and share best affordable housing practices.

- Revises funding reservation percentage categories for the awarding of State Housing Initiatives Partnership Program distributions.

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

- Decreases the applicable sales tax on the sale of a mobile home by calculating the sales tax on 50 percent of the sale price.
- Exempts from the sales tax a mobile home intended to be permanently affixed to the land and intended to be used as residential property.
- Revises requirements on how mobile home dealers offer and display mobile homes at a place of business.
- Revises features of repair and remodeling codes for mobile and manufactured homes.
- Expands the current exemption from regulation by the Public Service Commission to an owner of a mobile home park or a mobile home subdivision who provides water or wastewater service to a person leasing a lot, leasing a mobile home and a lot, or owning a lot in a mobile home subdivision.
- Permits a mobile home park damaged or destroyed by wind, water, or other natural force to be rebuilt on the same site with the same density as was approved, permitted, or built before being damaged or destroyed.
- Revises the rights and obligations of the park owner and the tenant in a mobile home park in a legal action based on nonpayment of rent.

II. Present Situation:

The various features of the bill principally address housing issues affecting local government development zoning, permitting and fees in ch. 163, F.S., affordable housing statutes within ch. 420, F.S., and statutes governing mobile homes within chs. 212, 320 and 723, F.S. The Present Situation within these general topic groupings is included in the Effect of Proposed Changes.

III. Effect of Proposed Changes:

Bill Sections Addressing Development Zoning, Permitting, 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

[1] FLA. CONST. art. VIII, s. 1(f).
[2] FLA. CONST. art. VIII, s. 1(g).

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 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]

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[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.

[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.

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]
- 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

[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.
[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.(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.

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. 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

[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 Jan. 6, 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 Jan. 6, 2019).
[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] *See supra* note 22.

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.

Proportionate Share

Proportionate share is a tool local governments may use to require developers to help mitigate the impacts of their development notwithstanding a failure to achieve and maintain adopted level-of-service standards.[30] Proportionate share generally requires developers to contribute to costs, or build facilities, necessary to offset a new development's impacts.[31] Local governments may require proportionate share contributions from developers for both transportation and school impacts.[32]

Local Government Financial Reporting

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

Section 218.32, F.S., requires counties, municipalities, and special districts to complete and submit to the Florida Department of Financial Services (DFS) a copy of its annual financial report (AFR) for the previous fiscal year no later than nine months after the end of the fiscal year. The AFR is not an audit but rather a unique financial document completed using a format prescribed by the DFS.[33]

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[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.
[30] Florida Department of Community Affairs (now Department of Economic Opportunity), *Transportation Concurrency: Best Practices Guide*, pg. 64 (2007), retrieved from http://www.cutr.usf.edu/pdf/DCA_TCBP%20Guide.pdf (last visited Jan. 9, 2019).
[31] *Id.*
[32] Sections 163.3180(5) and 163.3180(6), F.S.
[33] 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 Jan. 6, 2020).

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.[34] 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.[35]

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 the Bill

Sections 1 and 4 amend ss. 125.01055 and 166.04151, F.S., to -- notwithstanding any other law or local ordinance or regulation to the contrary -- authorize the board of a county commission and the governing body of a municipality, respectively, to approve the development of affordable housing on any parcel zoned for residential, commercial, or industrial use. The sections further provide that beginning October 1, 2020, a county or a municipality may not collect an impact fee, a permit or inspection fee, a tree mitigation fee, a water or sewer connection fee, or a proportionate share contribution for the development or construction of affordable housing.

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

Accessory Dwelling Units (Section 2)

Present Situation

An accessory dwelling unit (ADU) is an ancillary or secondary living unit that has a separate kitchen, bathroom, and sleeping area existing either within the same structure, or on the same lot, as the primary dwelling unit.[36] Section 163.31771, F.S., finds that encouraging local governments to permit ADUs to increase the availability of affordable rentals serves a public purpose. A local government may adopt an ordinance allowing ADUs in any area zoned for single-family residential use based upon a finding that there is a shortage of affordable rentals in its jurisdiction.[37] Each ADU allowed by an ordinance under s. 163.31771, F.S., shall count

[34] LOGER is *available at* https://apps.fldfs.com/LocalGov/Reports/ (last visited Jan. 6, 2020).
[35] *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 Jan. 6, 2020).
[36] 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.
[37] Section 163.31771(3), F.S.

towards the affordable housing component of the housing element in the local government's comprehensive plan.[38] 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.[39]

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.*[40] The stated intent of the Guidebook is to address the challenges and benefits a community might face as it considers allowing the implementation of ADUs and presents a range of alternatives for local governments and other stakeholders to consider and evaluate. Among other data points, the Guidebook found that:

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

Effect of the Bill

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

Building Permit Approval Processes (Section 11)

Present Situation

Development Permits & Orders and Certificates of Occupancy

A development permit pertains to any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.[41] When local governments are reviewing applications for such permits, current law specifically excludes building permits from this definition. [42] A certificate of occupancy is required before a building or structure may be used or occupied.[43] The appropriate local building official issues the certificate after completion of all work and a final inspection of the building or structure shows no violations of the Florida Building Code or other applicable laws.[44]

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[38] Section 163.31771(5), F.S.
[39] Section 163.31771(4), F.S. The parameters defining the various income designations are specified in s 420.0004, F.S.
[40] *See* Florida Housing Coalition, *Accessory Dwelling Unit Guidebook*, (May 2019) *available at* https://www.flhousing.org/wp-content/uploads/2019/08/ADU-Guidebook.pdf (last visited Jan. 7, 2020).
[41] Section 163.3164(16), F.S. Sections 553.79 and 553.792, F.S., provide that governments may enforce requirements to obtain building or development permits, including processing applications and granting building permits.
[42] Sections 125.022(4) and 166.033(4), F.S.
[43] Section 111.1, Florida Building Code – Building (6th ed. 2017), *available at* https://codes.iccsafe.org/public/document/FBC2017/chapter-1-scope-and-administration (last visited Jan. 03, 2019.
[44] Section 111.2, Florida Building Code – Building (6th ed. 2017). *available at* https://codes.iccsafe.org/public/document/FBC2017/chapter-1-scope-and-administration (last visited Jan. 03, 2019).

Chapter 2019-165, L.O.F., provided requirements and time limits for a county or municipality to review an application for a development permit or development order and as well as procedures for addressing deficiencies.

- Local governments must review an application for completeness and notify the applicant within 30 days that either the application is complete or contains deficiencies.[45]
- If deficiencies are identified, the applicant has 30 days to submit the required additional information.[46]
- Within 120 days after an application is deemed complete, or 180 days for applications that require a quasi-judicial hearing or public hearing, a local government must approve, approve with conditions, or deny the application.[47]

Building Permits

Local governments may enforce requirements to obtain building permits, including processing applications and granting building permits.[48] Chapter 553, part IV, F.S., of the Florida Building Code outlines local government deadlines for certain types of building permit applications:[49]

- Within 10 days of the application being submitted, the local government must inform the applicant in writing of information needed to complete the application, if any. If no written notice of deficiency is provided, the application is deemed properly completed and accepted.
- Within 45 days of receiving a completed application, the local government must notify the applicant if additional information is needed to determine whether the application is sufficient.
- Within 120 days after receiving a completed application, the local government must approve, approve with conditions, or deny the application.[50]

Effect of the Bill

Section 11 creates s. 420.0007, F.S., within State Housing Strategy statutes to establish a new process for local government permit approval specifically for affordable housing. A local government has 60 days after receiving an application for a development permit, construction permit, or certificate of occupancy for affordable housing to examine the application, notify the applicant of any apparent errors or omissions, and request any additional information the local government is authorized by law to require.

The local government may require any additional required information to be submitted within 10 days after the date it gives notice to the applicant. The local government must grant a request for an extension of time for submitting the additional information for good cause.

[45] Sections 125.022(1) and 163.033(1), F.S.
[46] *Id.*
[47] *Id.* These timeframes do not apply in areas of critical state concern in Monroe County and the City of Key West.
[48] Sections 553.79 and 553.792, F.S.
[49] The list includes permits for the following types of construction: accessory structure, alarm, nonresidential buildings less than 25,000 square feet, electric, irrigation, landscaping, mechanical, plumbing, residential units other than a single family unit, multifamily residential not exceeding 50 units, roofing, signs, site-plan approvals and subdivision plats not requiring public hearings or public notice, and lot grading and site alteration associated with the application. *See* s. 553.792(2), F.S.
[50] Section 553.792(1), F.S.

If a local government does not timely notify the applicant of any apparent errors or omissions or request additional information, it may not deny the development permit, construction permit, or certificate of occupancy for affordable housing if the applicant fails to correct errors or omissions or to supply additional information.

An application is complete when the local government has received all of the requested information and the correction of any error or omission as necessary or when the 60-day time for notification after receiving an application has expired.

The local government must approve or deny an application for a development permit, construction permit, or certificate of occupancy for affordable housing within 30 days after receipt of a completed application, unless a shorter period of time for local government is provided by law. If the local government does not approve or deny within this 30-day time period, the application is considered approved by default, and the local government must issue the development permit, construction permit, or certificate of occupancy.

An applicant for a development permit, construction permit, or certificate of occupancy seeking to receive a permit or certificate by default must notify the local government in writing of its intent to rely upon the default approval. However, the applicant may not take any action based upon the default approval of the development permit, construction permit, or certificate of occupancy until the applicant receives notification or a receipt acknowledging that the local government received the notice. The applicant must retain the notification or receipt.

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

Present Situation

The State Apartment Incentive Loan (SAIL) Program[51] provides low-interest loans on a competitive basis to affordable housing developers. SAIL is funded through a statutory distribution of documentary stamp tax revenues, which are deposited into the State Housing Trust Fund. This money often serves to bridge the gap between the primary financing and the total cost of the development. SAIL dollars are available to individuals, public entities, nonprofit organizations, or for-profit organizations that propose the construction or substantial rehabilitation of multifamily units affordable to very low income individuals and families. In most cases, the SAIL loan cannot exceed 25 percent of the total development cost and can be used in conjunction with other state and federal programs.

Florida Housing Finance Corporation (Florida Housing) administers the SAIL program and is required to establish a review committee for the competitive evaluation and selection of applications submitted. The evaluation criteria include local government contributions and local government comprehensive planning and activities that promote affordable housing.[52]

[51] *See* s. 420.5087, F.S., and Florida Housing Finance Corporation, *State Apartment Incentive Loan, Background*, for information cited in this section, *available at* http://www.floridahousing.org/programs/developers-multifamily-programs/state-apartment-incentive-loan (last visited Jan. 03, 2019).
[52] Section 420.5087(6)(c), F.S.

Effect of the Bill

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, Florida Housing administered the program in 2006 and 2007.[53]

CWHIP targeted households earning higher incomes than traditionally served through other affordable housing programs to create homeowner or rental housing for persons such as teachers, firefighters, healthcare providers and others as defined by local governments. Households earning up to 140 percent of AMI could be served through the program with that provision rising up to 150 percent of AMI in the Florida Keys.[54]

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

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

CWHIP loans were awarded with a 1 to 3 percent interest rate and could be forgiven where long-term affordability was provided and where at least 80% of the units are set aside for workforce housing and at least 50 percent of the units are set aside for essential services.[55]

Florida Housing administered two rounds of funding for CWHIP: $50 million in October of 2006 and $62.4 million in December of 2007.[56]

[53] Section 420.5095(2), F.S.
[54] Section 420.5095(3)(a), F.S.
[55] Section 420.5095(11), F.S.
[56] *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 Jan. 03, 2019).

Effect of the Bill

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

Incentivizing Rental to Homeownership Opportunities within Ch. 420, F.S. (Section 14)

Present Situation

Chapter 420, Florida Statutes on Housing

Chapter 420, F.S., initially adopted in 1988,[57] articulates the state housing strategy, which includes a goal that by the year 2010, Florida shall ensure that decent and affordable housing is available for all of its residents.[58] Section 420.0003(1), F.S., provides that this strategy must involve state, regional, and local governments working in partnership with communities and the private sector and must involve financial as well as regulatory commitment to accomplish this goal.

In addition to outlining the state housing strategy, the seven parts of ch. 420, F.S., also govern:
- The Housing Development Corporation of Florida;[59]
- The Low-income Emergency Home Repair Program;
- Neighborhood Housing Rehabilitation and Service Grant Programs for local governments; [60]
- Coalitions for Homeless and Family Emergency Assistance;[61]
- The Florida Housing Finance Corporation; and
- The State Housing Initiatives Partnership.

Florida Housing Finance Corporation's Rental Resource Allocations

As a public corporation of the state,[62] Florida Housing acts primarily as a financial institution. It utilizes federal and state resources to finance the development and preservation of affordable

[57] Ch. 1988-376, Laws of Fla.
[58] Section 420.0003(2), F.S.
[59] FHDC is a private entity governed by ch. 420, F.S., which brings financial institutions, investors, and state and federal housing agencies together to originate, close, and fund transactions to construct affordable multifamily housing. The financial institution stockholders. Ownership in FHDC is one opportunity for financial institutions to comply with the Community Reinvestment Act.
[60] The Low-income Emergency Home Repair Program and Neighborhood Housing Services Grant Program are housed within DEO.
[61] The State Office on Homelessness may administer moneys appropriated to it for distribution among the 28 local homeless continuums of care designated by the Department of Children and Families.
[62] Chapter 97-167, Laws of Fla., created Florida Housing as a public-private entity to replace the Florida Housing Finance Agency for the ostensible purposes of reducing bureaucracy and streamlining administrative processes.

homeowner and rental housing and assist eligible homebuyers with financing and down payment assistance.

Housed within the DEO, Florida Housing's powers and responsibilities are outlined in s. 420.507, F.S., and include a charge to develop and administer the state rental and homeownership programs as outlined in Florida Statutes. Florida Housing awards allocations of rental resources through a competitive Request for Application (RFA) process pursuant to Florida Administrative Code Rule 67-60. Each RFA is independently drafted and includes at least one public workshop and a public comment period, before the final request is issued. Applications are scored by Florida Housing staff and recommendations are forwarded to Florida Housing's board of directors, which makes final award decisions.[63]

RFAs include an applicant's commitment to provide certain eligible resident programs at the development.[64] One resident program option for applicants seeking to develop affordable housing for families is a Homeownership Opportunity Program.[65] This program provides a financial incentive incentivizing a resident's transition from rental housing to a single family home.

Effect of the Bill

Section 14 creates s. 420.5098, F.S., to establish a Rental to Homeownership Opportunity Program. The specifications and parameters of the program mirror a resident program commitment option Florida Housing currently utilizes within certain RFAs for affordable rental housing funding. The bill would require each rental development receiving funding authorized by ch. 420, F.S., to establish a resident homeownership opportunity financial incentive program that includes the following provisions:

- The incentive must be not less than 5 percent of the rent for the resident's unit during the resident's entire occupancy.
- The resident will receive the incentive for all months for which the resident complies with the terms and conditions of the lease.
- The benefits of the incentive must accrue from the beginning of occupancy.
- The benefit must be in the form of a gift or grant and may not be a loan of any nature.
- The vesting period may not be longer than 3 years of continuous residency.
- A fee, deposit, or any other such charge may not be levied against the resident as a condition of participation in this program.
- The incentive must be applicable to a home selected by the resident and may not be restricted to or be enhanced by the purchase of homes in which a rental funding applicant, rental developer, or other related party has an interest.
- Damages to the unit in excess of the security deposit will be deducted from the incentive.
- Florida Housing may adopt rules to implement the program.

[63] *See* Florida Housing Finance Corporation, *2018 Annual Report*, *available at* https://www.floridahousing.org/docs/default-source/data-docs-and-reports/annual-reports/2018-annual-report.pdf?sfvrsn=e80dea7b_2 (last visited Jan. 4, 2020).
[64] Depending on the type affordable housing demographic an applicate chooses to serve, resident programs may be required or there may be options from which to choose.
[65] Other family demographic resident program options include programs for children after school, adult literacy, employment assistance and financial management.

Affordable Housing Workshops for Locally Elected Officials utilizing Catalyst and SHIP (Sections 15 and 18)

Present Situation

Affordable Housing Catalyst Program

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

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

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

State Housing Initiatives Partnership Program (SHIP)

Administered by Florida Housing, the SHIP Program provides funds to all 67 counties and 52 Community Developments Block Grant entitlement cities on a population-based formula to finance and preserve affordable housing based on locally adopted housing plans.[69] The program targets very-low, low, and moderate-income families. SHIP is funded through a statutory distribution of documentary stamp tax revenues, which are deposited into the Local Government Housing Trust Fund.

Subject to specific appropriation, funds are distributed quarterly to local governments participating in the program.[70] Funds are expended per each local government's adopted Local

[66] To the maximum extent feasible, the entity to provide the necessary expertise must be recognized by the Internal Revenue Service as a nonprofit tax-exempt organization.
[67] *Contract for Affordable Housing Catalyst Services between Florida Housing Finance Corporation and the Florida Housing Coalition, Inc*., (July 1, 2019) *available at* https://www.floridahousing.org/docs/default-source/legal/contracts/2019/014-2019---the-florida-housing-coalition-inc---affordable-housing-catalyst-program-services.pdf?sfvrsn=c09dea7b_2 (last visited Jan 5, 2020).
[68] The *2019/2020 Catalyst Training Schedule* is *available at* https://www.floridahousing.org/docs/default-source/programs/special-programs/catalyst/training-schedule-catalyst-2019-2020.pdf?sfvrsn=2 (last visited Jan. 5, 2020). A link to the Florida Housing Coalition's *Work Shop and Webinar Calendar* is *available at https://www.flhousing.org/events/list/?tribe_paged=2&tribe_event_display=list* (last visited Jan. 5, 2020).
[69] *See* ss. 420.907-420.9089, F.S.
[70] Section 420.9073, F.S.

Housing Assistance Plan (LHAP), which details the housing strategies they will use.[71] Local governments submit their LHAPs to Florida Housing for review to ensure that they meet the broad statutory guidelines and the requirements of the program rules. Florida Housing must approve an LHAP before a local government may receive SHIP funding for the applicable years.

SHIP Incentive Strategies and Advisory Committee

Within 12 months of adopting a LHAP, each participating local government must amend the plan to include local housing incentive strategies.[72] 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.[73]

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.[74] The AHAC is comprised of local citizens representing a range of affordable housing stakeholders.[75] At a minimum, each AHAC must submit a report to the local governing body on certain affordable housing incentives including:

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

Local governments that receive the minimum allocation under SHIP[76] 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.[77] This standing commission is charged with recommending public policy changes to the Governor and Legislature to stimulate community development and revitalization and promote the production, preservation and maintenance of decent, affordable housing for all Floridians. Section 420.609, F.S., specifies the make-up of 21 members who are appointed by the Governor to the Commission. Florida

[71] Section 420.9075, F.S.
[72] Section 420.9076(1), F.S.
[73] Section 420.9071(16), F.S.
[74] Section 420.9076(4), F.S.
[75] Section 420.9076(2), F.S.
[76] Pursuant to s. 420.9073(3), F.S., the minimum local housing distribution is $350,000.
[77] Chapter 86-192 Laws of Fla.

Housing provides administrative support to the Commission, but the Commission has not received funding or gubernatorial appointments since 2008.[78]

The 2017 Legislature created a statewide Affordable Housing Workgroup (Workgroup).[79] 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.[80]

Effect of the Bill

Section 15 amends s. 420.531, F.S., to establish quarterly regional workshops for locally elected officials serving on affordable housing advisory committees as provided for by SHIP in s. 420.9076, F.S. The entity providing statewide training and technical assistance for the Catalyst Program authorized in s. 420.531, F.S., will administer and conduct the workshops with the intent of facilitating peer-to-peer identification and sharing of best affordable housing practices. Workshops may be conducted through teleconferencing or other technological means. Annual reports summarizing each region's deliberations and recommendations, as well as local official attendance records, must be submitted to the President of the Senate, the Speaker of the House, and Florida Housing Finance Corporation.

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

Section 18 amends s. 420.9076, F.S., to modify requirements of SHIP affordable housing advisory committees. The new provisions include ensuring that one locally elected official from each participating SHIP county or municipality serves on the advisory committee. This official, or a locally elected designee, must attend quarterly workshops on affordable housing best practices as provided for in section 15 of the bill. If a locally elected official fails to attend a regional workshop, Florida Housing may withhold the participating SHIP entity's funds pending the person's attendance at the next quarterly scheduled quarterly meeting.

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

[78] Commission Annual Reports submitted from 1987-2008 are *available at* http://apps.floridahousing.org/StandAlone/AHSC/AHSC-AnnualReports.htm (last visited Jan 6, 2020).
[79] Chapter 2017-071, s. 46, Laws of Fla. Legislation creating the workgroup designated Florida Housing Finance Corporation as the administering entity.
[80] The Workgroup's Final Report, meeting agendas, research materials and other information is available at https://www.floridahousing.org/about-florida-housing/workgroup-on-affordable-housing (last visited Jan. 6, 2019).

SHIP Funding Criteria within Local Housing Assistance Plans (Sections 17)

Present Situation

Section 420.9075(5), F.S., specifies several percentage threshold criteria a local government must follow in awarding its SHIP funds to eligible entities.

- A minimum of 65 percent of the funds must be spent on eligible homeownership activities.[81]
- A maximum of 25 percent of funds may be reserved for rental housing.
- A minimum of 75 percent of funds must be spent on eligible construction activities.
- A minimum of 20 percent of its local housing distribution to serve persons with special needs.
- A maximum of 20 percent of the funds may be made available for manufactured housing.
- A minimum of 30 percent of the funds must be reserved for very low income households and an additional 30 percent must be reserved for low income households.[82]

No more than 5 percent of SHIP funds may be used for administrative expenses unless a local government makes a finding of need by resolution. Upon such a resolution, administrative expenses may be no more than 10 percent.[83]

Florida Housing monitors the activities of local government compliance with program requirements and collects data on the operation and achievements of SHIP housing partnerships.[84] If Florida Housing determines a violation of the criteria for a LHAP or that an eligible sponsor or eligible person has violated the applicable award conditions, Florida Housing reports the violation to its compliance monitoring agent and the Executive Office of the Governor.[85] The distribution of program funds to the local government must be suspended until the violation is corrected.[86]

Effect of the Bill

Section 17 amends s. 420.9075, F.S., to modify criteria for SHIP funding awards within LHAPs. Specifically, available SHIP distribution funding reserved for rental housing increases from 'up to 25 percent' to 'up to 30 percent.' In addition, existing explicit numeric-targeted funding reservations for construction purposes, manufactured housing, persons with special needs and very-low-income and low-income persons are removed. Reservations for these purposes are still possible but the local SHIP entity may determine the amounts rather than follow existing proscribed threshold percentages. The section also removes a process to allow SHIP entities to exceed the 5 percent cap on administrative costs for programs.

[81] According to Florida Housing, on average, 85 percent of local government distributions are used for homeownership purposes. *See Overview of Florida Housing Finance Corporation* (July 2017) *available at* https://www.floridahousing.org/docs/default-source/aboutflorida/august2017/august2017/tab8.pdf (last visited Jan. 5, 2020).
[82] These very-low-income and low-income reservation requirements do not apply to certain areas of critical state concern pursuant to s. 420.5075(5)(g)2., F.S.
[83] Section 420.5075(7), F.S.
[84] Section 420.9075(9), F.S.
[85] Section 420.9075(13), F.S.
[86] *Id.*

Bill Sections Addressing Mobile Homes

Mobile Home Act

Chapter 723, F.S., the "Florida Mobile Home Act" (act) addresses the unique relationship between a mobile home owner and a mobile home park owner.[87] The provisions in ch. 723, F.S., apply to residential tenancies where a mobile home is placed upon a lot that is rented or leased from a mobile home park that has 10 or more lots offered for rent or lease.[88]

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.[89]
- "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.[90]

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.[91] If the fee is not paid by December 31, a penalty of 10 percent of the amount due must be assessed. Additionally, if the fee is not paid, the park owner does not have standing to maintain or defend any action in in court until the amount due, plus any penalty, is paid.[92]

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.[93]

Mobile Home Sales Tax (Sections 5 and 6)

Present Situation

The sales tax on tangible personal property is six percent of the sales price when sold at retail.[94] Aircrafts, boats, and mobile homes are also assessed a sales tax of six percent of the retail sale price.[95]

A mobile home may be taxed as real property and not as tangible property, if a taxpayer purchases a mobile home that is then affixed permanently to land owned by the taxpayer.[96] The taxpayer must apply to the Department of Revenue for a declaration of real property. As part of

[87] Section 723.004, F.S.
[88] Section 723.002(1), F.S.
[89] Section 723.003(12), F.S.
[90] Section 723.003(11), F.S.
[91] Section 723.007(1), F.S.
[92] *Id.*
[93] Section 723.007(2), F.S.
[94] Section 212.05(1)(a)1.a., F.S.
[95] Section 212.05(1)(b)1.b., F.S.
[96] Section 320.015, F.S.

the application for declaration of real property, the taxpayer must have the local property appraiser certify that the mobile home is permanently affixed to land owned by the taxpayer.[97]

The Department of Highway Safety and Motor Vehicles (DHSMV) must provide "RP" stickers to tax collectors for use by the registered owner of a mobile home or recreational vehicle to affix to such vehicle when the vehicle is taxed as real property. The "RP" sticker is used in lieu of a license plate.[98]

Improvements to real property may be considered when determining the tax assessed on real property.[99] When determining whether a person has improved real property, the term "fixtures" means:

> [I]tems that are an accessory to a building, other structure, or land and that do not lose their identity as accessories when installed but that do become permanently attached to realty. However, the term does not include the following items, whether or not such items are attached to real property in a permanent manner: property of a type that is required to be registered, licensed, titled, or documented by this state or by the United States Government, including, but not limited to, mobile homes, except mobile homes assessed as real property, or industrial machinery or equipment. For purposes of this paragraph, industrial machinery or equipment is not limited to machinery and equipment used to manufacture, process, compound, or produce tangible personal property. For an item to be considered a fixture, it is not necessary that the owner of the item also own the real property to which it is attached.[100]

Effect of the Bill

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

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

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

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[97] *See* ss. 212.06(14)(a) and 320.0815, F.S.
[98] Section 320.0815(2), F.S.
[99] Section 212.06(14)(a), F.S., defines "real property" to mean the land and improvements thereto and fixtures and is synonymous with the terms "realty" and "real estate."
[100] Section 212.06(14)(b), F.S.

Mobile Home Dealer Display Requirements (Section 7)

Present Situation

A mobile home dealer must hold a license issued by the DHSMV.[101] 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.[102] 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.[103]

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.[104]

Effect of the Bill

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

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

Present Situation

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

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

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

[101] Section 320.77(2), F.S.
[102] *See* s. 320.77(1)(b), F.S., defining the term "mobile home broker."
[103] Section 320.77(1)(a), F.S.
[104] Section 320.77(3)(h), F.S.

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

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

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

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

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

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

Effect of the Bill

Section 8 amends s. 320.822, F.S., to revise the term "Mobile Home Repair and Remodeling Code" to the "Mobile and Manufactured Home Repair and Remodeling Code."

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

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

Present Situation

In various areas throughout Florida, water and wastewater services are provided through privately-owned and operated water and wastewater companies. These privately-owned companies are referred to as "investor-owned utilities," or "IOUs."[105]

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

For IOUs operating within a single Florida county, the county has the option to regulate rates and service or allow the Public Service Commission (PSC) to regulate those utilities.[106] Currently, the PSC has jurisdiction over 150 water and wastewater IOUs in 38 of 67 counties in Florida.[107]

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).[108]

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.[109]
- "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.[110]
- "Lot rental amount" means all financial obligations, except user fees, which are required as a condition of the tenancy.[111]
- "User fees" means those amounts charged in addition to the lot rental amount for nonessential optional services provided by or through the park owner to the mobile home owner under a separate written agreement between the mobile home owner and the person furnishing the optional service or services.[112]

Effect of the Bill

Section 10 amends s. 367.022, F.S., to expand the current exemption from regulation by the PSC to an owner of a mobile home park or a mobile home subdivision who provides water or wastewater service to any person:

- Leasing a lot;
- Leasing a mobile home and a lot; or

[106] 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.
[107] *Facts and Figures of the Florida Utility Industry*, Florida Public Service Commission (June 2019), *available at* http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Factsandfigures/June%202019.pdf (last visited Jan. 3, 2020).
[108] *See* s. 367.022, F.S.
[109] Section 723.003(14), F.S.
[110] Section 723.003(10), F.S.
[111] Section 723.003(6), F.S.
[112] Section 723.003(21), F.S.

- Who owns a lot in a mobile home subdivision.

The reselling of "wastewater" is also included within the current exemption from regulation by the PSC.

The bill expands the existing exemption for landlords who provide tenants with water and wastewater services to include mobile home park owners who are not in a landlord-tenant relationship with the mobile home owners. Under the bill, a person who owns a mobile home and the lot to which the home is affixed is a "tenant" for the purpose of exempting the park owner from regulation by the PSC. The bill retains the current condition that the park owner does not receive specific compensation for the service in order qualify for the exemption.

Replacing Mobile Homes in a Mobile Home Park (Section 19)

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."[113]

Effect of the Bill

Section 19 amends s.723.041, F.S., to provide that a mobile home park that is damaged or destroyed due to wind, water, or other natural force may be rebuilt on the same site with the same density as was approved, permitted, or built before being damaged or destroyed. This section also provides that the regulation of the uniform firesafety standards established under s. 633.206, F.S., are not limited by s.723.041, F.S. However, s. 723.041, F.S., supersedes any other density, separation, setback, or lot size regulation adopted after initial permitting and construction of the mobile home park.

Mobile Home Park Lot Termination of Tenancy (Sections 20 and 21)

Present Situation

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

- Nonpayment of rent;
- Conviction of a violation of a federal or state law or local ordinance, if the violation is detrimental to the health, safety, or welfare of other residents of the mobile home park;
- A violation of the park rules or of the rental agreement;
- A change in land use; or
- Failure to qualify as, and to obtain approval to become, a tenant or occupant of the home, if such approval is required by a properly promulgated rule.

Notices to a mobile home owner and tenant or occupant under s. 723.061, F.S., must be in writing and sent by certified or registered mail, return receipt requested, addressed to the mobile

[113] Section 723.041(4), F.S.

home owner and tenant or occupant at her or his last known address.[114] Delivery of the mailed notice shall be deemed given 5 days after the date of postmark.

Section 723.063, F.S., provides the process for a court action based upon nonpayment of rent or seeking to recover unpaid rent, or a portion thereof. The mobile homeowner may defend upon the grounds of a material noncompliance with any portion of ch. 723, F.S., or may raise any other defense, whether legal or equitable, which he or she may have.[115]

If a park owner or a mobile home owner files a lawsuit based on the homeowner's nonpayment of rent, the mobile home owner must pay into the registry of the court that portion of the accrued rent, if any, relating to the claim of material noncompliance as alleged in the complaint, or as determined by the court. The court must notify the mobile home owner of this requirement. If the mobile home owner fails to pay the rent, or portion thereof, into the registry of the court, the mobile home owner waives the right to all defenses other than payment, and the park owner is entitled to an immediate default.[116]

The court must advance a hearing on a park owner's claim of nonpayment of rent, if the park owner is in actual danger of loss of the premises or other personal hardship resulting from the loss of rental income from the premises. After a preliminary hearing, the court may award all or any portion of the funds on deposit to the park owner or may proceed immediately to a final resolution of the cause.[117]

Effect of the Bill

Section 20 amends s. 723.061, F.S., to send notices to a mobile home owner and tenant or occupant by U.S. Mail rather than by certified or registered mail, return receipt requested.

This section also provides that a park owner does not waive the right to terminate the rental agreement or the right to bring a civil action for the noncompliance, if a park owner accepts payment for any portion of a lot rental amount with actual knowledge of noncompliance after notice and termination of the rental agreement. This provision applies to violations related to the tenant's nonpayment of rent, conviction of a violation of a federal or state law or local ordinance that is detrimental to the health, safety, or welfare of other residents of the mobile home park, a violation of the park rules or of the rental agreement, or failure to qualify as, and to obtain approval to become, a tenant or occupant of the home, if such approval is required by a properly promulgated rule.

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

[114] 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.
[115] Section 723.063(1), F.S.
[116] Section 723.063(2), F.S.
[117] Section 723.063(3), F.S.

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

Section 21 amends s. 723.063, F.S., to require a mobile home owner to file a motion to determine the amount of rent to be paid into the registry within 5 days, excluding Saturdays, Sundays, and legal holidays, after the date of service of process constitutes. If the motion is not timely filed by the homeowner, the homeowner tenant is deemed to have waived all defenses other than payment, and the landlord is entitled to an immediate default judgment for removal of the tenant with a writ of possession to issue without further notice or hearing. If a motion to determine rent is filed, sworn documentation is required to support a tenant's allegation that the rental amount alleged in the complaint is erroneous.

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

Bill Sections Addressing Conforming and Clarifying Issues and Effective Date

Effects of the Bill

Section 16 amends s. 420.9071, F.S., to incorporate conforming cross references for language in sections 11 and 17 of the bill.

Section 22 reenacts a portion of s. 420.507, F.S., to incorporate the amending language in section 12 of the bill.

Section 23 reenacts a portion of s. 193.018, F.S., to incorporate the amending in section 13 of the bill.

Section 24 reenacts a portion of s. 420.9072, F.S., to incorporate the amending language in section 16 of the bill.

Section 25 provides an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

State mandates on local governments are generally described in the Florida Constitution as general laws requiring counties or municipalities to spend funds, limiting their ability to raise revenue, or reducing the percentage of a state-shared tax revenue. In 1991, Senate

President Margolis and House Speaker Wetherell created a memo to guide the House and Senate in the review of local government mandates.[118]

Article VII, Section 18(a) of the Florida Constitution, provides that counties and municipalities are not bound by general laws requiring them to spend funds or take action that requires the expenditure of funds unless certain specified exemptions or exceptions are met. However, the mandate requirement does not apply to laws having an insignificant impact, which for Fiscal Year 2019-2020 is forecast at approximately $2.2 million. [119,120,121]

The bill will require counties and cities to incur costs to adopt an ordinance to allow accessory dwelling units. If the cumulative cost for counties and cities to adopt accessory dwelling unit ordinances is determined to exceed $2.2 million, paragraph (a) of section 18 would require the bill to contain a finding of important state interest and meet one of the exceptions specified in that paragraph: provision of funding or a funding mechanism, or enactment by vote of two-thirds of the membership in each house.

Article VII, Section 18(b) of the Florida Constitution provides that the Legislature, except upon approval by a two-thirds vote, may not enact a general law if the anticipated effect of doing so would be to reduce the authority that counties or municipalities have to raise revenues in the aggregate. Like Article VII, Section 18(a), this mandate requirement does not apply to laws having an insignificant fiscal impact.

The mandates provision of Article VII, Section 18 of the Florida Constitution may apply because the bill prohibits a county or municipality from collecting an impact fee, a permit or inspection fee, a tree mitigation fee, a water and sewer connection fee or a proportionate share contribution for the development or construction of affordable housing. If the bill is determined to reduce the authority that counties and municipalities have to raise revenues in the aggregate and exceeds the threshold for insignificant fiscal impact, the bill may qualify as a mandate and require final passage by a two-thirds vote of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

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[118] Memorandum to Members of The Florida House and The Florida Senate from Gwen Margolis, President of the Senate, and T.K. Wetherell, Speaker of the House, *County and Municipal Mandates Analysis,* (March 7, 1991) (on file with the Senate Committee on Community Affairs).
[119] FLA. CONST. art. VII, s. 18(d).
[120] An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times $0.10. *See* Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), *available at:* http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited Jan. 7, 2020).
[121] Based on the Florida Demographic Estimating Conference's July 8, 2019 population forecast for 2020 of 21,555,986. The conference packet is *available at*: http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf (last visited Jan. 7, 2020).

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

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

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

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

B. Private Sector Impact:

Developers of affordable housing may experience savings from the prohibition of impact fees and other specified fees linked to affordable housing. A purchaser of a mobile home would pay a reduced sales tax.

C. Government Sector Impact:

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

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

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 367.022(5), F.S., currently exempts from regulation by the PSC "landlords providing [water or wastewater] service to their tenants without specific compensation for the service." The bill amends s. 367.022(5), F.S., to expand the current exemption from PSC regulation to an owner of a mobile home park or a mobile home subdivision who provides water or wastewater service to certain persons, including a person who owns a lot in a mobile home subdivision. The bill also amends s. 367.022(9), F.S., to include the reselling of "wastewater" within the current exemption from regulation by the PSC.

In the absence of a lot rental agreement specifying the payment of rent for the mobile home lot, it is not clear how a mobile home park owner may provide water and wastewater services or establish a user fee for such service without receiving specific compensation for the service.

A Department of Revenue analysis of the bill opined that allowing a purchaser of a mobile home to avoid paying sales tax by signing an affidavit indicating they intend to have the mobile home declared as real property taxes after the initial purchase potentially raises administrative difficulties.[122] Specifically, the bill provides no process for verification that the purchaser completes the required process necessary for the mobile home to be declared as real property. Also, if the mobile home is not declared as real property, and remains tangible personal property, then the purchaser has failed to remit sales/use tax on the mobile home. Additionally, the mobile home may not be properly assessed for local property taxes.

Line 732 provides priority consideration for workforce housing projects that set aside "not more than 50%" of units for workforce housing. It is unclear if this may lead to funding priority being given to projects with the least amount of workforce units.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 125.01055, 163.31771, 163.31801, 166.04151, 212.05, 212.06, 320.77, 320.822, 320.8232, 367.022, 420.5087, 420.5095, 420.5098, 420.531, 420.9071, 420.9075, 420.9076, 723.041, 723.061, 723.063, 420.507, 193.018, and 420.9072.

This bill creates section 420.0007 of the Florida Statutes.

IX. Additional Information:

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

None.

[122] Department of Revenue, *Agency Bill Analysis of SB 998* (Dec. 17, 2019) (on file with the Senate Committee on Community Affairs).

B. Amendments:

None.