

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 Rules

BILL: CS/CS/SB 962

INTRODUCER: Rules Committee, Transportation Committee and Senator Bradley

SUBJECT: Residential Development Projects for Affordable Housing

DATE: February 4, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	Favorable
2.	<u>Price</u>	<u>Vickers</u>	<u>TR</u>	Fav/CS
3.	<u>Hackett</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 962 authorizes a county or municipality, regardless of zoning ordinances or the locality's comprehensive plan, to approve the development of any residential development project, including a mixed-use residential development project, on any parcel zoned for commercial or industrial use if 10 percent of the project's units are reserved for affordable housing. Current law authorizes a county or municipality to approve the development of affordable housing on any parcel zoned for residential, commercial, or industrial use regardless of zoning ordinances or the locality's comprehensive plan, but does not specifically address mixed-use residential projects or the portion of units that must be reserved for affordable housing.

The sponsor of a project so approved must additionally agree not to apply for or receive funding from the state's multi-family affordable housing program, known as the State Apartment Incentive Loan (SAIL), limiting eligible projects to those not already seeking SAIL funding.

The bill clarifies that the new and existing provisions allowing affordable housing projects to circumvent comprehensive plans and other ordinances are self-executing and do not require further action by local governments before using this approval process.

The bill takes effect upon becoming a law.

II. Present Situation:

Comprehensive Plans and Amendments

The Growth Management Act requires every city and county to create and implement a comprehensive plan to guide future development.¹ A locality's comprehensive plan lays out the locations for future public facilities, including roads, water and sewer facilities, neighborhoods, parks, schools, and commercial and industrial developments. A comprehensive plan is made up of elements, each laying out regulations for a different facet of development. There are 10 required elements,² most relevant among them:

- The land use element of the plan designates proposed future general distribution, location, and extent of the uses of land. Specified use designations include those for residential, commercial, industry, agriculture, recreation, conservation, education, and public facilities.³
- The housing element of the plan sets forth guidelines and strategies for the creation and preservation of affordable housing for all current and anticipated future residents of the jurisdiction, elimination of substandard housing conditions, provision of adequate sites for future housing, and distribution of housing for a range of incomes and types.⁴

Development that does not conform to the comprehensive plan may not be approved by a local government unless the local government amends its comprehensive plan first. State law requires a proposed comprehensive plan amendment to receive public hearings, the first held by the local planning board.⁵ 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.⁶ The process for approving comprehensive plan amendments is bifurcated. Most plan amendments are placed into the Expedited State Review Process, while plan amendments relating to large-scale developments are placed into the State Coordinated Review Process.⁷

Zoning and Amendments to Zoning

In addition to maintaining each comprehensive plan, local governments regulate aspects of land development by enacting ordinances that address local zoning, rezoning, subdivision, building

¹ Section 163.3167(2), F.S.

² Section 163.3177(6), F.S. The 10 required elements include capital improvements; future land use plan; transportation; general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge; conservation; recreation and open space; housing; coastal management; intergovernmental coordination; and property rights. Throughout statutes exist plans and programs that may be added as optional elements.

³ Section 163.3177(6)(a), F.S.

⁴ Section 163.3177(6)(f), F.S.

⁵ Sections 163.3174(4)(a) and 163.3184, F.S.

⁶ Section 163.3184, F.S.

⁷ See ss. 163.3184 and 380.06, F.S. In the Expedited State Review Process, DEO reviews and approves or amends the proposed comprehensive plan amendment. This process can take 4 to 6 months. The State Coordinated Review Process is a more thorough, complex, multi-phase process. For more information, see Florida Department of Economic Opportunity, *Amendments that Must Follow the State Coordinated Review Process; Procedures and Timeframes*, available at <https://floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/amendments-that-must-follow-the-state-coordinated-review-process-procedures-and-timeframes> (last visited January 4, 2022).

construction, landscaping, tree protection, sign regulations, or any other regulations controlling the development of land.⁸

Statutes prescribe 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 notice requirements.⁹ If the area affected is less than 10 acres, the local government is required to notify by mail each property owner and hold a public meeting to discuss the ordinance or resolution before passage.¹⁰ If the area affected is 10 acres or greater the local government must hold two separate meetings at which to discuss the changes, and notice the public through either mail to each property owner or to the public generally by newspaper.¹¹

Affordable Housing

Affordable housing is safe and decent housing. It differs from market rate housing in two ways: the income of the family living in the housing; and the financing of the housing.¹² Affordable housing is defined in terms of the income of the people living in the home. Housing is considered affordable when monthly rent or mortgage payments including taxes and insurance do not exceed 30 percent of the household income.¹³ It is generally accepted that a lower income family spending more than 30-40 percent of its income on housing costs will be cost burdened and not have enough money left over to pay for items such as transportation, food, clothing and healthcare.¹⁴

What makes housing affordable is a decrease in monthly rent or mortgage payments, allowing a family to pay less for the housing than it otherwise would cost at “market rate.” Lower monthly payments are a result of affordable housing financing to support homeownership and rental housing, provided through public sector programs at the federal, state and local level.¹⁵

Resident eligibility for Florida’s state and federally funded housing programs is typically governed by area median income (AMI) levels, published annually by the U.S. Department of Housing and Urban Development (HUD) for every county and metropolitan area. The following are standard household income level definitions and their relationship to the 2021 Florida state

⁸ 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.

⁹ See sections 125.66(4) and 166.041(3), F.S.

¹⁰ *Id.*

¹¹ *Id.*

¹² Affordable Housing Workgroup, 2017 Final Report, page 5, available at: https://www.floridahousing.org/docs/default-source/aboutflorida/august2017/ahwg-report_2017-web-print.pdf?sfvrsn=2 (last visited December 28, 2021).

¹³ Section 420.0004(3), F.S. Public housing, commonly referred to as Section 8 Housing, is provided by local housing agencies (HAs) for low-income residents. Funding for HAs is provided directly from HUD.

¹⁴ *Supra* note 12.

¹⁵ *Id.*

AMI of \$70,000 for a family of four (as family size increases or decreases, the income range also increases or decreases):¹⁶

- Extremely low income – earning up to 30 percent AMI (at or below \$21,000);¹⁷
- Very low income – earning from 30.01 to 50 percent AMI (\$21,001 to \$35,000);¹⁸
- Low income – earning from 50.01 to 80 percent AMI (\$35,001 to \$56,000);¹⁹ and
- Moderate income – earning from 80.01 to 120 percent of AMI (\$56,001 to \$84,000).²⁰

Florida Housing Finance Corporation

The Florida Housing Finance Corporation (Florida Housing) is a public corporation created by the Legislature to assist in providing a range of affordable housing opportunities for Florida residents. Florida Housing administers federal and state resources to make loans, guarantees of loans, and to issue bonds to finance the development and preservation of affordable homeowner and rental housing and assist homebuyers with financing and down payment assistance.²¹

Florida Housing is eligible to receive both state and federal funding to execute its affordable housing programs. Principal state funding, if appropriated, comes from documentary stamp tax revenues distributed to the State Housing Trust Fund and the Local Government Housing Trust Fund.²² Programs supported by the two trust funds include the State Apartment Incentive Loan Program (SAIL)²³ and the State Housing Initiatives Partnership Program (SHIP).²⁴

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

The SHIP program provides funds to all 67 counties and Florida's larger cities on a population based formula to finance and preserve affordable housing for very low, low, and moderate income families based on locally adopted housing plans.

¹⁶ U.S. Department of Housing and Urban Development, *Income Limits, Access Individual Income Limits Areas – Click Here for FY 2021 IL Documentation*, available at <https://www.huduser.gov/portal/datasets/il.html#2021> (last visited December 3, 2021).

¹⁷ Section 420.0004(9), F.S.

¹⁸ Section 420.0004(17), F.S.

¹⁹ Section 420.0004(11), F.S.

²⁰ Section 420.0004(12), F.S.

²¹ See *Overview of Florida Housing Finance Corporation*, Florida Housing Finance Corporation, available at <https://www.floridahousing.org/docs/default-source/aboutflorida/august2017/august2017/tab8.pdf>, (last visited December 28, 2021).

²² Section 201.15, F.S.

²³ Section 420.5087, F.S.

²⁴ Sections 420.907-420.9089, F.S.

²⁵ See section 420.5087, F.S., and Florida Housing, *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 January 4, 2022).

Statutory Guidance on County and Municipal Affordable Housing

As part of ongoing efforts to ensure citizens have access to affordable housing options, the Legislature has enacted various policies to encourage the development of affordable housing at the local level in addition to state programs. In 2001, the Legislature authorized counties and municipalities 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” regardless of other provisions of law.²⁶ “Inclusionary housing ordinances,” often called inclusionary “zoning” ordinances, are ordinances by which a local government will require affordable housing units as a prerequisite to approving development of market rate units.²⁷ The intent of such ordinances is to increase the production of affordable housing in general and also in specific geographic areas with a greater need for affordable housing.²⁸

More recently, in 2020, the Legislature enacted legislation to authorize counties and municipalities, notwithstanding any other provision of law, to approve the development of housing that is affordable on any parcel zoned for residential, commercial, or industrial use.²⁹ This allows counties and municipalities to approve developments which include affordable housing on any parcel without amending the locality’s comprehensive plan or zoning ordinances, saving time and effort for both local governments and developers of affordable housing. The law is silent as to whether developments allowed to bypass comprehensive plans and zoning ordinances include mixed-use developments, as contemplated by the bill.

III. Effect of Proposed Changes:

The bill amends ss. 125.01055(6) and 166.04151(6), F.S., to clarify that a county or municipality, respectively, may notwithstanding any other provision of law, approve the development of any residential development project, including a mixed-use residential development project,³⁰ on any parcel zoned for commercial or industrial use if 10 percent of the project’s units are reserved for housing that is affordable. The sponsor of the project must additionally agree not to apply for or receive SAIL program funding, limiting eligible projects to those not already seeking SAIL funding.

The bill also clarifies that new and existing provisions allowing affordable housing projects to circumvent comprehensive plans and other ordinances are self-executing and do not require further action by local governments before using this approval process.

The bill takes effect upon becoming a law.

²⁶ Sections 125.01055 and 166.04151, F.S.; Sections 15 and 16, ch. 2001-252, Laws of Fla.

²⁷ 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 January 4, 2022).

²⁸ *Id.*

²⁹ Sections 125.01055(6) and 166.04151(6), F.S.; Sections 1 and 6, ch. 2020-27, Laws of Fla.

³⁰ While “mixed-use residential development” is not defined in statute, it is generally accepted to include any development combining two or more land uses, so long as one is residential. The other use could be retail, professional, or any other use. See generally Tyler Adams, *Mixed-Use Zoning*, available at <https://sustainablecitycode.org/brief/mixed-use-zoning/> (last visited December 8, 2021).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Developers incorporating affordable housing into development projects may benefit from bypassing comprehensive plan amendments and other delays in project approval.

C. Government Sector Impact:

Local governments may experience greater efficiencies in approving developments including affordable housing components.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 125.01055 and 166.04151 of the Florida Statutes.

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 Rules on February 3, 2022:

The committee substitute adds a requirement that a development on a parcel zoned for commercial or industrial use must make at least 10 percent of its units affordable housing to trigger the provisions of the bill.

CS by Transportation on January 25, 2022:

The committee substitute clarifies that the authorized approval of any residential development project, including a mixed-use residential development project, must be for a project on a parcel that is zoned for commercial or industrial use.

- B. **Amendments:**

None.