

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 981 Residential Development Projects for Affordable Housing

SPONSOR(S): State Affairs Committee, Local Administration & Veterans Affairs Subcommittee, Payne

TIED BILLS: IDEN./SIM. BILLS: CS/SB 962

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration & Veterans Affairs Subcommittee	14 Y, 1 N, As CS	Leshko	Miller
2) State Affairs Committee	21 Y, 0 N, As CS	Leshko	Williamson

SUMMARY ANALYSIS

Under the Community Planning Act, local governments have the responsibility and authority to create comprehensive plans preparing and providing guidance for future development and growth. Comprehensive plans provide guidelines for the use and development of land and housing, including affordable housing.

Local planning agencies are responsible for drafting comprehensive plans and any amendments. Comprehensive plans and plan amendments must pass through the expedited state review process, which could take nine months or more to complete.

Current law provides guidance to local governments regarding developer fees and incentives, as well as zoning guidance relating to affordable housing.

Developers utilize the State Apartment Incentive Loan (SAIL) Program to acquire gap funding for development projects that include affordable housing.

This bill allows for the approval of residential development projects containing affordable housing, including mixed-use residential development projects, for parcels that are zoned for commercial or industrial use. The bill allows the board of county commissioners and the governing body of a municipality to approve a residential development project, including a mixed-use residential project, in these zones provided that at least 10 percent of the units included in the project are for affordable housing and the developer agrees not to apply for or receive funding from SAIL. The bill further provides that this provision is self-executing and does not require the adoption of an ordinance or regulation before this approval process may be used.

The bill does not appear to have a fiscal impact on the state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Community Planning Act

Local governments¹ have the power and responsibility to plan for future development and growth. To meet this responsibility, local governments are required to maintain comprehensive plans and implement these plans through adoption of appropriate land development regulations² or other elements.³

Local Planning Agencies

Local governments create local planning agencies by ordinance. A local planning agency is responsible for drafting a comprehensive plan, monitoring the effectiveness of the plan, and amending the plan.⁴ Once the local planning agency has drafted the plan or an amendment, but before it may make a recommendation to the governing body⁵ of the local government, the local planning agency must hold at least one public hearing, with public notice, on the proposed plan or plan amendment.⁶ Local planning agencies also review proposed land development regulations and land development codes, and amendments to these, and make recommendations to the governing body as to the consistency of the proposal with the adopted comprehensive plan.⁷

Adoption of Comprehensive Plans and Amendments - Expedited State Review

Comprehensive plans and plan amendments that have been adopted by local governments follow the expedited state review process.⁸ The local government must first hold a public hearing at which a majority of the governing body members present at the hearing must vote in favor of the plan or amendment.⁹ Within 10 working days after the first public hearing, the local government must submit the plan or amendment for review and comment from the reviewing agencies.¹⁰ These reviewing agencies have 30 days to submit their comments.¹¹ The local government is then required to hold a second public hearing within 180 days of receiving the agency comments.¹² A comprehensive plan or amendment may then be adopted by ordinance.¹³ The governing body has 10 days after adoption to submit the plan or amendment to the state land planning agency. The state land planning agency then

¹ Any county or municipality. S. 163.3164(29), F.S.

² Defined as ordinances enacted by governing bodies for the regulation of any aspect of development and includes any local government zoning, rezoning, subdivision, building constructions, or sign regulations or any other regulations controlling the development of land. S. 163.3164(26), F.S.

³ S. 163.3167(1)(a-c) and (2), F.S.

⁴ S. 163.3174(4)(a-b), F.S.

⁵ The board of county commissioners of a county, the commission or council of an incorporated municipality, or any other chief governing body of a unit of local government. S. 163.3164(20), F.S.

⁶ S. 163.3174(4)(a), F.S.

⁷ S. 163.3174(4)(c), F.S.

⁸ S. 163.3184(2)(a), F.S.

⁹ S. 163.3184(11)(a), F.S.

¹⁰ S. 163.3184(3)(b), F.S.; Reviewing agencies include the state land planning agency, the appropriate regional planning council, the appropriate water management district, the Department of Environmental Protection, the Department of State, the Department of Transportation, and depending on the circumstances, the Department of Education, the commanding officer of an affected military installation, the Fish and Wildlife Conservation Commission, the Department of Agriculture and Consumer Services, and in the case of a municipal plan or amendment, the county in which the municipality is located. S. 163.3184(1)(c), F.S.

¹¹ S. 163.3184(3)(b)2., F.S.

¹² S. 163.3184(3)(c), F.S.

¹³ S. 163.3184(11)(a), F.S.

notifies the local government whether the submission is complete or if there are any deficiencies.¹⁴ A plan or amendment becomes effective 31 days after the state land planning agency notifies the local government that the plan or amendment package is complete.¹⁵

At the request of an applicant, a local government must consider an application for zoning changes that would be required to properly enact any proposed plan amendment. Zoning changes approved by the local government are contingent upon the comprehensive plan or plan amendment transmitted to the state land planning agency becoming effective.¹⁶

Within one year after submitting its comprehensive plan, a local government must adopt or amend and enforce land development regulations that are consistent with and implement its adopted comprehensive plan.¹⁷

Development agreements and authorized developments must be consistent with the comprehensive plan and land development regulations.¹⁸

Comprehensive Plans

Comprehensive plans adopted by local governments provide the principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area. A key purpose of a plan is to establish meaningful and predictable standards for the use and development of land.¹⁹

Comprehensive plans must include a future land use plan element that designates proposed future general distribution, location, and extent of the uses of land for residential, commercial, industrial, agricultural, recreation, conservation, education, public facilities, and other categories of public and private land uses.²⁰ Each future land use category must be defined in terms of uses allowed and must include standards to be followed in the control and distribution of population densities and building and structure intensities.²¹ The future land use plan must include guidelines for the implementation of mixed-use developments.²²

Comprehensive plans must also include a housing element consisting of principles, guidelines, standards, and strategies to be followed in:

- The provision of housing for all current and anticipated future residents of the jurisdiction;
- The elimination of substandard dwelling conditions;
- The structural and aesthetic improvement of existing housing;
- The provision of adequate sites for future housing, including affordable housing; and
- The creation or preservation of affordable housing to minimize the need for additional local services and avoid the concentration of affordable housing units only in specific areas of the jurisdiction.²³

The element must further provide for specific programs and actions to address housing needs in the jurisdiction, streamline the permitting process, minimize costs and delays for affordable housing, establish standards to address the quality of housing, and the stabilization of neighborhoods.²⁴

Statutory Guidance on County and Municipal Affordable Housing

¹⁴ S. 163.3184(3)(c)2.-3., F.S.

¹⁵ S. 163.3184(3)(c)4., F.S.

¹⁶ S. 163.3184(12), F.S.

¹⁷ S. 163.3202(1), F.S.

¹⁸ S. 163.3231, F.S.

¹⁹ S. 163.3177(1), F.S.

²⁰ S. 163.3177(6)(a), F.S.

²¹ S. 163.3177(6)(a)1., F.S.

²² S. 163.3177(6)(a)3.h., F.S.

²³ S. 163.3177(6)(f)1., F.S.

²⁴ S. 163.3177(6)(f)3., F.S.

Local governments may 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 through land use mechanisms such as inclusionary housing ordinances or linkage fee ordinances.²⁵

Inclusionary housing ordinances (sometimes called inclusionary zoning ordinances) are land use regulations requiring affordable housing units to be provided in conjunction with the development of market rate units. The purpose 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.²⁶ A developer may be permitted to contribute to a housing fund or other alternative in lieu of building affordable housing units.²⁷

Linkage fee ordinances require the payment of either a flat or percentage-based fee calculated on the number of approved dwelling units or the amount of approved square footage, or other specification.²⁸

In exchange for fulfilling the requirements of inclusionary housing ordinances or linkage fee ordinances, the local government must provide incentives to fully offset all costs to the developer in fulfilling these requirements. Such incentives may include density or intensity bonuses, more floor space than allowed under the current or proposed future land use designation or zoning, and reducing or waiving fees such as impact fees or water and sewer charges.²⁹

Local governments may approve the development of affordable housing on any parcel zoned for residential, commercial, or industrial use, notwithstanding any other law or local ordinance or regulation to the contrary.³⁰

Affordable Housing

Affordable housing is generally defined in relation to the annual area median household income adjusted for family size. "Affordable"³¹ means the sum of monthly rents or monthly mortgage payments (including taxes and 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,³² very-low-income households,³³ low-income households,³⁴ or moderate-income households.³⁵

²⁵ Ss. 125.01055(1) and 166.04151(1), F.S.

²⁶ Ross, J. and Outka, U., The Florida Housing Coalition, *Inclusionary Housing: A Challenge Worth Taking*, p. 7, <https://www.flhousing.org/wp-content/uploads/2012/05/Inclusionary-Housing-A-Challenge-Worth-Taking.pdf> (last visited Jan. 14, 2022).

²⁷ Ss. 125.01055(2) and 166.04151(2), F.S.

²⁸ Ss. 125.01055(3) and 166.04151(3), F.S.

²⁹ Ss. 125.01055(4) and 166.04151(4), F.S.

³⁰ Ss. 125.01055(6) and 166.04151(6), F.S.

³¹ S. 420.0004(3), F.S.

³² S. 420.0004(9), F.S. "Extremely-low-income persons" means one or more natural persons or a family whose total annual household income does not exceed 30 percent of the median annual adjusted gross income for households within the state. 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.

³³ S. 420.0004(17), F.S. "Very-low-income persons" means one or more natural persons or a family, not including students, the total annual adjusted gross household income of which does not exceed 50 percent of the median annual adjusted gross income for households within the state, or 50 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

³⁴ S. 420.0004(11), F.S. "Low-income persons" means one or more natural persons or a family, the total annual adjusted gross household income of which does not exceed 80 percent of the median annual adjusted gross income for households within the state, or 80 percent of the median annual adjusted gross income for households within the MSA or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

³⁵ S. 420.0004(12), F.S. "Moderate-income persons" means one or more natural persons or a family, the total annual adjusted gross household income of which is less than 120 percent of the median annual adjusted gross income for households within the state, or 120 percent of the median annual adjusted gross income for households within the MSA or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

State Apartment Incentive Loan Program

The State Apartment Incentive Loan (SAIL) Program³⁶ 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.

The Florida Housing Finance Corporation 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.³⁷

Effect of Proposed Changes

This bill expands the exception to zoning or other laws allowing a county or municipality to approve the development of affordable housing on parcels zoned for residential use, commercial use, or industrial use. The bill allows for the approval of residential development projects containing affordable housing, including mixed-use residential development projects, for parcels that are zoned for commercial or industrial use. The bill allows the board of county commissioners or the governing body of a municipality to approve a residential development project, including a mixed-use residential project, in these zones as an exception to zoning requirements provided that at least 10 percent of the units included in the project are for affordable housing and the developer agrees not to apply for or receive funding from SAIL. The bill further provides that this provision is self-executing and does not require the adoption of an ordinance or regulation before this approval process may be used.

B. SECTION DIRECTORY:

Section 1: Authorizes the board of county commissioners to approve certain residential development projects using a specified approval process.

Section 2: Authorizes the governing body of a municipality to approve certain residential development projects using a specified approval process.

Section 3: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

³⁶ See s. 420.5087, F.S., and Florida Housing Finance Corporation, *State Apartment Incentive Loan, Background*, for information cited in this section, <http://www.floridahousing.org/programs/developers-multifamily-programs/state-apartment-incentive-loan> (last visited Jan. 17, 2022).

³⁷ S. 420.5087(6)(c), F.S.

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may provide for an increase in development application approval for residential projects, including mixed-used residential projects, but will prohibit developer's from applying for gap funding from the SAIL Program for these projects.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither requires nor authorizes administrative rulemaking by executive agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 25, 2022, the Local Administration & Veterans Affairs Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment clarifies that residential development projects, including mixed-use residential development projects, may be approved for parcels that are zoned for commercial or industrial use. The amendment further provides two additional requirements for approval of a residential development project: 1) a portion of the project must be for affordable housing and 2) the sponsor of the project must agree not to apply for or receive funding from the State Apartment Incentive Loan Program.

On February 1, 2022, the State Affairs Committee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS specified that at least 10 percent of the units included in the residential development project be for affordable housing. The PCS further changed the term "sponsor" to "developer."

This analysis is drafted to the committee substitute adopted by the State Affairs Committee.