

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 Appropriations Committee on Transportation, Tourism, and Economic Development

BILL: CS/SB 184

INTRODUCER: Community Affairs Committee and Senator Gaetz

SUBJECT: Affordable Housing

DATE: March 10, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fleming</u>	<u>Fleming</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Nortelus</u>	<u>Nortelus</u>	<u>ATD</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 184 proposes three changes to current law relating to the development and supply of affordable housing. First, the bill requires each county and municipality to enact an ordinance to allow accessory dwelling units (ADU) in all single-family residential areas to increase the availability of affordable rentals for low-and moderate-income persons. Under current law, local governments are authorized, but not required, to enact such ordinance. The bill provides that the owner of a property with an ADU may not be denied a homestead exemption for those portions of property on which the owner maintains a permanent residence solely on the basis of the property containing an ADU.

The bill also allows certain land donated to a local government for affordable housing to be used to provide affordable housing to military families receiving the basic allowance for housing. Current law establishes a system in which local governments may issue density bonuses to landowners that donate land to the local government for affordable housing, and the density bonus can be used anywhere within the jurisdiction that allows residential development.

Finally, the bill directs the Office of Program Policy Analysis and Government Accountability (OPPAGA) to evaluate the efficacy of using mezzanine finance, or second position short-term debt, to stimulate the construction of owner-occupied affordable housing, and evaluate potential for tiny homes to meet affordable housing needs.

The bill has a negative, insignificant fiscal impact on OPPAGA which can be absorbed within existing resources. See Section V. Fiscal Impact Statement.

The bill takes effect on July 1, 2025.

II. Present Situation:

Affordable Housing

One major goal at all levels of government is to ensure that citizens have access to affordable housing. Housing is considered affordable when it costs less than 30 percent of a family's gross income. A family paying more than 30 percent of its income for housing is considered "cost burdened," while those paying more than 50 percent are considered "extremely cost burdened." Severely cost burdened households are more likely to sacrifice other necessities such as healthy food and healthcare to pay for housing, and to experience unstable housing situations such as eviction.

Affordable housing is defined in terms of household income. Resident eligibility for Florida's state and federally funded housing programs is typically governed by area median income (AMI) levels. These levels are published annually by the U.S. Department of Housing and Urban Development (HUD) for every county and metropolitan area.¹ Florida Statutes categorizes the levels of household income as follows:

- Extremely low income – earning up to 30 percent AMI;²
- Very low income – earning from 30.01 to 50 percent AMI;³
- Low income – earning from 50.01 to percent AMI;⁴ and
- Moderate income – earning from 80.01 to 120 percent of AMI.⁵

Florida Housing Finance Corporation

The 1997 Legislature created the Florida Housing Finance Corporation (FHFC) as a public-private entity to assist in providing a range of affordable housing opportunities for Floridians.⁶ The FHFC is a corporation held by the state and housed within the Department of Commerce (department). The FHFC is a separate budget entity and its operations, including those relating to personnel, purchasing, transactions involving real or personal property, and budgetary matters, are not subject to control, supervision, or direction by the department.⁷

The goal of the FHFC is to increase the supply of safe, affordable housing for individuals and families with very low to moderate incomes by stimulating investment of private capital and encouraging public and private sector housing partnerships. As a financial institution, the FHFC

¹ U.S. Department of Housing and Urban Development, *Income Limits, Access Individual Income Limits Areas – Click Here for FY 2024 IL Documentation*, available at <https://www.huduser.gov/portal/datasets/il.html> (last visited Feb. 16, 2025).

² Section 420.0004(9), F.S.

³ Section 420.0004(17), F.S.

⁴ Section 420.0004(11), F.S.

⁵ Section 420.0004(12), F.S.

⁶ Chapter 97-167, Laws of Fla. From 1980 through 1997, the former Florida Housing Finance Agency, placed within the former Department of Community Affairs, performed similar duties.

⁷ Section 420.504(1), F.S.

administers federal and state resources to finance the development and preservation of affordable rental housing and assist homebuyers with financing and down payment assistance.

Funding for Affordable Housing

The FHFC draws and administers funds from federal programs through federal tax credits and the HUD,⁸ from the state through the State Housing Trust Fund and Local Government Housing Trust Fund,⁹ both funded by documentary stamp taxes, as well as ad hoc individual legislative appropriations, and through program income, which consists primarily of funds from successful loan repayment that is recycled into the program it came from.

Multifamily Affordable Housing Development

The primary state program for the development of multifamily rental housing is the State Apartment Incentive Loan (SAIL) Program, administered by the FHFC. The SAIL program provides low-interest loans on a competitive basis to multifamily affordable housing developers,¹⁰ used to bridge the gap between the development's primary financing and the total cost of the development. SAIL dollars are available for developers proposing to construct or substantially rehabilitate multifamily rental housing¹¹ and who agree to set-aside a specified number of units for households at certain AMI levels.

Additionally, local governments can participate in the development of multifamily rental through the State Housing Incentive Partnership (SHIP) Program. Also administered through the FHFC, the SHIP program provides funds to all 67 counties and 52 Community Development Block Grant¹² entitlement cities on a population-based formula to finance and preserve affordable housing based on locally adopted housing plans. SHIP funds may be used to pay for emergency repairs, rehabilitation, down payment and closing cost assistance, impact fees, construction and gap financing, mortgage buydowns, acquisition of property for affordable housing, matching dollars for federal housing grants and programs, and homeownership counseling.¹³

Homeownership Assistance

The state's primary homeownership assistance program is the Hometown Hero Program,¹⁴ administered by the FHFC. Under the program, eligible first time homebuyers have access to a zero-interest second mortgage to reduce the amount of down payment and closing costs by a minimum of \$10,000 and up to 5 percent of the first mortgage loan, not exceeding \$35,000. Loans must be repaid when the property is sold, refinanced, rented, or transferred unless otherwise approved by the FHFC.

⁸ See ss. 420.507(33) and 159.608, F.S.

⁹ Section 201.15, F.S.

¹⁰ Section 420.5087, F.S.

¹¹ See Florida Housing Finance Corporation, *State Apartment Incentive Loan*, available at <https://floridahousing.org/programs/developers-multifamily-programs/state-apartment-incentive-loan> (last visited February 24, 2025).

¹² The CDBG program is a federal program created in 1974 that provides funding for housing and community development activities.

¹³ Section 420.072(7), F.S.

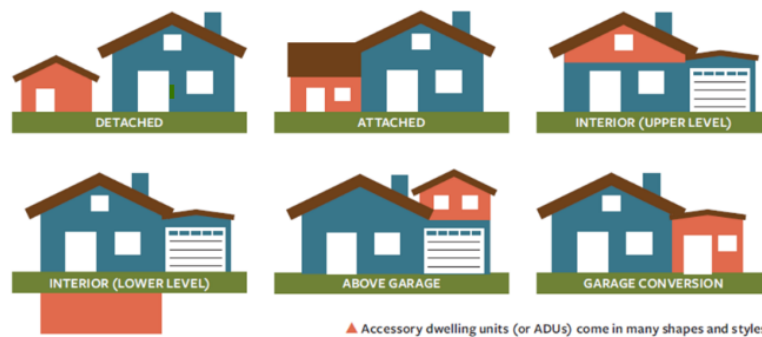
¹⁴ Section 420.5096, F.S.

Additionally, many local governments also independently offer their own downpayment assistance programs, separate from the Hometown Hero Program, using SHIP funds, or other locally generated funds.

Accessory Dwelling Units

Accessory dwelling units, or ADUs, have been proposed as a way to add housing stock to address the country's housing crisis.¹⁵ ADUs are independent living spaces, outfitted with their own kitchen, bathroom, and sleeping area, and located on the same lot as a primary dwelling, but are smaller in size.¹⁶ Florida Statutes defines ADU as “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.”¹⁷

ADUs go by many different names, including accessory apartments, secondary suites, and granny flats.¹⁸ ADUs can be converted portions of existing homes (i.e., interior ADUs), additions to new or existing homes (i.e., attached ADUs), or new stand-alone accessory structures or converted portions of existing stand-alone accessory structures (i.e., detached ADUs).¹⁹ The graphic below illustrates the various options for the construction or conversion of ADUs.



Source: AARP, ADUs Come in Many Shapes and Sizes²⁰

Section 163.31771, F.S., finds that encouraging local governments to permit ADUs to increase the availability of affordable rentals serves a public purpose.²¹ Current law expressly authorizes a local government to adopt an ordinance allowing ADUs in any area zoned for single-family

¹⁵ Joint Center for Housing Studies of Harvard University, *How Nonprofits Are Using Accessory Dwelling Units as an Affordable Housing Strategy*, Sept. 26, 2024, available at: <https://www.jchs.harvard.edu/blog/how-nonprofits-are-using-accessory-dwelling-units-affordable-housing-strategy> (last visited Feb. 24, 2025).

¹⁶ *Id.*

¹⁷ Section 163.31771(2)(a), F.S.

¹⁸ American Planning Association, *Accessory Dwelling Units*, available at: <https://www.planning.org/knowledgebase/accessorydwelling/> (last visited Feb. 24, 2025). ADUs are sometimes referred to as “granny flats” to denote their use in accommodating the housing needs of aging parents.

¹⁹ *Id.*

²⁰ AARP, *AARP Livable Communities: ADUs Come in Many Shapes and Sizes*, available at: <https://www.aarp.org/livable-communities/housing/info-2019/adus-come-in-many-shapes-and-styles.html> (last visited Feb. 24, 2025).

²¹ Section 163.31771(1), F.S.

residential use.²² Further, an application for a building permit to construct an ADU 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.²³

The Florida Housing Coalition studied the extent to which local governments recognized ADUs in their land development regulations and found the following:

- Of Florida’s 67 counties, 16 did not address any ADU in their land development codes; and
- Of the 15 most populous cities in Florida, 11 of them explicitly allow ADUs in single-family districts.²⁴

Density Bonus Incentives for Land Donation

A common tool in boosting affordable housing supply is the use of density bonuses for affordable housing. Typically, a density bonus allows developers to exceed a project’s zoning limitations, such as height or density restrictions, in exchange for including a certain number of affordable units in their development. As an affordable housing incentive, a jurisdiction may increase the maximum units allowable if a builder develops affordable housing units in exchange. The presence of bonus units will allow a developer to sell more homes or rent more apartments and thus help meet various financial feasibility criteria.²⁵

Section 420.615, F.S., expressly authorizes local governments to provide density bonus incentives to landowners who voluntarily donate fee simple interest in real property to the local government for the purpose of assisting the local government in providing affordable housing.²⁶ The density bonus may be applied to any land within the local government’s jurisdiction provided that residential use is an allowable use on the receiving land.²⁷ The local government may transfer all or a portion of the donated land to a nonprofit housing organization, such as a community land trust, housing authority, or community redevelopment agency, to be used for the production and preservation of permanently affordable housing. The donated land must be subject to deed restrictions to ensure that the property will be used for affordable housing.²⁸

General Overview of Property Taxation

The ad valorem tax or “property tax” is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of a property as of

²² Section 163.31771(3), F.S.

²³ Section 163.31771(4), F.S. The parameters defining the various income designations are specified in s 420.0004, F.S.

²⁴ See Florida Housing Coalition, *Accessory Dwelling Unit Guidebook*, April 2024, available at <https://www.flhousing.org/wp-content/uploads/2019/08/ADU-Guidebook.pdf> (last visited Feb. 24, 2025).

²⁵ Florida Housing Coalition, *Affordable Housing Incentive Strategies: A Guidebook for Affordable Housing Advisory Committee Members and Local Government Staff*, 2021, p. 49, available at: <https://www.flhousing.org/wp-content/uploads/2021/08/8-4-21-AHAC-Guide-UPDATE.pdf> (last visited Feb. 24, 2025).

²⁶ For purposes of this section, the terms “affordable,” “extremely-low-income persons,” “low-income persons,” “moderate-income persons,” and “very-low-income persons” have the same meaning as in s. 420.0004, F.S.

²⁷ Section 420.615(3), F.S.

²⁸ Section 420.615(6), F.S.

January 1 of each year.²⁹ The property appraiser annually determines the “just value”³⁰ of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property’s “taxable value.”³¹ The Florida Constitution prohibits the state from levying ad valorem taxes³² and it limits the Legislature’s authority to provide for property valuations at less than just value, unless expressly authorized.³³

Homestead Exemptions

The Florida Constitution establishes homestead protections for certain residential real estate in the state in three distinct ways. First, it provides homesteads, property owned and maintained as a person’s primary residence, with an exemption from taxes.³⁴ Second, the homestead provisions protect the homestead from forced sale by creditors.³⁵ Third, the homestead provisions delineate the restrictions a homestead owner faces when attempting to alienate or devise the homestead property.³⁶

Every person having legal or equitable title to real estate and who maintains a permanent residence on the real estate is deemed to establish homestead property. Homestead property is eligible for a \$25,000 tax exemption applicable to all ad valorem tax levies, including levies by school districts.³⁷ An additional exemption applies to homestead property value between \$50,000 and \$75,000. This exemption is adjusted annually for inflation from the 2024 value of \$25,000 and does not apply to ad valorem taxes levied by school districts.³⁸

Save Our Homes Assessment Limitation and Portability

In 1992, Florida voters approved the Save Our Homes amendment to the Florida Constitution.³⁹ The Save Our Homes assessment limitation limits the amount that a homestead property's assessed value may increase annually to the lesser of 3 percent or the percentage increase in the Consumer Price Index.⁴⁰ The accumulated difference between the assessed value and the just

²⁹ Both real property and tangible personal property are subject to tax. Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

³⁰ Property must be valued at “just value” for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. Art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm’s-length transaction. *See, e.g., Walter v. Schuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *S. Bell Tel. & Tel. Co. v. Dade Cnty.*, 275 So. 2d 4 (Fla. 1973).

³¹ *See* ss. 192.001(2) and (16), F.S.

³² FLA. CONST. art. VII, s. 1(a).

³³ *See* FLA. CONST. art. VII, s. 4.

³⁴ FLA. CONST. art. VII, s. 6.

³⁵ FLA. CONST. art. X, s. 4.

³⁶ *Id.* at (c).

³⁷ FLA. CONST. art VII, s. 6(a).

³⁸ *Id.* The percent change in the Consumer Price Index for All Urban Consumers, U.S. City Average, all items 1967=100 is used to adjust the exemption, if such percent change is positive. *Id.* For the 2025 tax year, the exemption amount is \$25,722. *See* Volusia County Property Appraiser, Homestead Exemption, <https://vcpa.vcgov.org/exemption/homestead> (last visited Feb. 24, 2025).

³⁹ FLA. CONST. art. VII, s. 4(d). The Florida Legislature implemented the Save Our Homes amendment in s. 193.155, F.S.

⁴⁰ FLA. CONST. art. VII, s. 4(d).

value is the Save Our Homes benefit. The Save Our Homes assessment limitation is considered portable because a homestead property owner may transfer this benefit when moving from one homestead property to another.⁴¹ Due to the homestead exemption effects and the Save Our Homes assessment limitation, many homestead properties enjoy significant tax savings.

Commercial Use of Homestead Property

Section 196.012(13), F.S., provides that “ ‘[r]eal estate used and owned as a homestead’ means real property to the extent provided in s. 6(a), Art. VII of the State Constitution, but less any portion thereof used for commercial purposes, with the title of such property being recorded in the official records of the county in which the property is located. Property rented for more than 6 months is presumed to be used for commercial purposes.”⁴²

Abandonment of Homestead Property

Both the homestead property tax exemption and the Save Our Homes assessment limitation may be lost by a property owner that abandons homestead property. Failure to maintain a homestead property as a permanent residence may constitute abandonment under certain circumstances.⁴³ Section 196.061(1), F.S., describes when renting a homestead property constitutes abandonment:

“The rental of all or substantially all of a dwelling previously claimed to be a homestead for tax purposes shall constitute the abandonment of such dwelling as a homestead, and the abandonment continues until the dwelling is physically occupied by the owner. However, such abandonment of the homestead after January 1 of any year does not affect the homestead exemption for tax purposes for that particular year unless the property is rented for more than 30 days per calendar year for 2 consecutive years.”

III. Effect of Proposed Changes:

Section 1 amends s. 163.31771, F.S., to require, instead of authorize, local governments to adopt an ordinance to allow ADUs in any area zoned for single-family residential use. The ordinance cannot require any increase in parking requirements to accommodate the ADU, may not require that the owner of a parcel with an ADU reside on such parcel, and does not apply to a planned unit development or master planned community.⁴⁴

The bill also provides that the owner of a property with an ADU may not be denied a homestead exemption for those portions of property on which the owner maintains a permanent residence solely on the basis of the property containing an ADU.

⁴¹ See FLA. CONST. art. VII, s. 4(d)(8); see also s. 193.155, F.S.

⁴² See also Florida Administrative Code Rule 12D-7.013(5): “Property used as a residence and also used by the owner as a place of business does not lose its homestead character. The two uses should be separated with that portion used as a residence being granted the exemption and the remainder being taxed.”

⁴³ See ss. 196.031 and 193.155, F.S.

⁴⁴ “Planned unit development” or “master planned community” means an area of land that is planned and developed as a single entity or in approved stages with uses and structures substantially related to the character of the entire development, or a self-contained development in which the subdivision and zoning controls are applied to the project as a whole rather than to individual lots. Section 163.3202(b)2., F.S.

Section 2 amends s. 420.615, F.S., to expand the express authorization for local governments to grant density bonuses to landowners that donate land to the local government for the purpose of providing affordable housing, to specify that affordable housing includes housing for military families receiving the basic allowance for housing.

Section 3 directs OPPAGA to evaluate the efficacy of using mezzanine finance,⁴⁵ or second position short-term debt, to stimulate the construction of owner-occupied affordable housing. OPPAGA must also evaluate the potential of tiny homes to meet affordable housing needs in this state. OPPAGA must consult with the FHFC and the Shimberg Center for Housing Studies at the University of Florida and submit a report of its finding to the Legislature by December 31, 2026. The report must include recommendations for the structuring of a model mezzanine finance program.

Section 4 provides that the bill takes effect on July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the Florida Constitution provides, in part, that a county or municipality may not be bound by a general law requiring a county or municipality to spend funds or take an action that requires the expenditure of funds unless certain specified exemptions or exceptions are met. The bill may require counties and municipalities to expend funds associated with the requirement to enact an ordinance authorizing the use of ADUs. However, the mandate requirement does not apply to laws having an insignificant impact,⁴⁶ which for Fiscal Year 2025-2026 is forecast at approximately \$2.4 million.⁴⁷ The aggregate cost for local governments to implement this provision is likely insignificant.

However, if the bill does qualify as a mandate, in order to be binding upon cities and counties, the bill must contain a finding of important state interest and be approved by a two-thirds vote of the membership of each house.

B. Public Records/Open Meetings Issues:

None.

⁴⁵ A mezzanine loan is a debt-equity instrument that sits in a middle, or “mezzanine” position in the capital stack: below the mortgage, but above the equity. Because it is subordinate to direct loans and other types of senior debts, its paid after these other debts in the event of insolvency. Mezzanine loans are associated with higher risk because they are typically unsecured, or only have a junior lien on assets as collateral, and as such can command higher interest rates than traditional loans. However, mezzanine loans may provide more flexibility than direct loans, including flexible repayment terms, where the lender may agree to interest-only payments for initial periods. See Center for Public Enterprise. *Smoothing the Housing Investment Cycle. Part I.* July 2024. Available at: <https://publicenterprise.org/wp-content/uploads/Smoothing-the-Housing-Investment-Cycle-Part-1.pdf> (last visited Feb. 24, 2025).

⁴⁶ FLA. CONST. art. VII, s. 18(d).

⁴⁷ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See FLA. SENATE COMM. ON CMTY. AFFAIRS, Interim Report 2012-115: Insignificant Impact (Sept. 2011), available at: <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf>.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Upon enactment of local ADU ordinances across the state, individuals may benefit from greater access to affordable rentals and single-family property owners may benefit from the resulting ADU rental income. Additionally, there may be opportunities to increase the supply of housing that is affordable for military families due to density bonus incentives.

C. Government Sector Impact:

Counties and municipalities will likely incur administrative expenses associated with the development and noticing of the ADU ordinance as required in section 1 of the bill. The bill requires OPPAGA to submit a report to the Legislature which will have a negative fiscal impact on the office which can be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 163.31771 and 420.615.

This bill creates an undesignated section of Florida law.

IX. Additional Information:

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

CS by Community Affairs on February 18, 2025:

The committee substitute:

- Provides that a local government may not require that the owner of a parcel with an ADU reside on such parcel.
- Modifies the mezzanine finance provision to require OPPAGA to study the efficacy of using mezzanine finance, instead of directing FHFC to implement a model program, and requires OPPAGA to also evaluate tiny homes used for affordable housing.
- Provides that the owner of a property with an ADU may not be denied a homestead exemption solely on the basis of the property containing an ADU that is or may be rented to another person

- B. **Amendments:**

None.