

**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.)

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: SB 184

INTRODUCER: Senator Gaetz

SUBJECT: Affordable Housing

DATE: February 17, 2025

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fleming	Fleming	CA	<b>Pre-meeting</b>
2.			ATD	
3.			RC	

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## I. Summary:

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 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 also directs the Florida Housing Finance Corporation to create a model program, to be implemented by select counties, that uses mezzanine finance to stimulate the supply of owner-occupied affordable housing. 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.

Finally, the bill 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.

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.<sup>1</sup> Florida Statutes categorizes the levels of household income as follows:

- Extremely low income – earning up to 30% AMI;<sup>2</sup>
- Very low income – earning from 30.01 to 50% AMI;<sup>3</sup>
- Low income – earning from 50.01 to 80% AMI;<sup>4</sup> and
- Moderate income – earning from 80.01 to 120% of AMI.<sup>5</sup>

### **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.<sup>6</sup> 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.<sup>7</sup>

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 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,<sup>8</sup> from the state through the State Housing Trust Fund and Local Government Housing Trust Fund,<sup>9</sup> 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.

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<sup>1</sup> 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).

<sup>2</sup> Section 420.0004(9), F.S.

<sup>3</sup> Section 420.0004(17), F.S.

<sup>4</sup> Section 420.0004(11), F.S.

<sup>5</sup> Section 420.0004(12), F.S.

<sup>6</sup> 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.

<sup>7</sup> Section 420.504(1), F.S.

<sup>8</sup> See ss. 420.507(33) and 159.608, F.S.

<sup>9</sup> Section 201.15, F.S.

### ***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,<sup>10</sup> 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 housing<sup>11</sup> 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 Grant<sup>12</sup> 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.<sup>13</sup>

### ***Homeownership Assistance***

The state's primary homeownership assistance program is the Hometown Hero Program,<sup>14</sup> 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.

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.<sup>15</sup> 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.<sup>16</sup> Florida Statutes defines ADU as "an ancillary or secondary living unit that

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<sup>10</sup> Section 420.5087, F.S.

<sup>11</sup> 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 15, 2025).

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

<sup>13</sup> Section 420.072(7), F.S.

<sup>14</sup> Section 420.5096, F.S.

<sup>15</sup> 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. 15, 2025).

<sup>16</sup> *Id.*

has a separate kitchen, bathroom, and sleeping area existing either within the same structure, or on the same lot, as the primary dwelling unit.”<sup>17</sup>

ADUs go by many different names, including accessory apartments, secondary suites, and granny flats.<sup>18</sup> 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).<sup>19</sup> The graphic below illustrates the various options for the construction or conversion of ADUs.



Source: AARP, ADUs Come in Many Shapes and Sizes<sup>20</sup>

Section 163.31771, F.S., finds that encouraging local governments to permit ADUs to increase the availability of affordable rentals serves a public purpose.<sup>21</sup> Current law expressly authorizes a local government to adopt an ordinance allowing ADUs in any area zoned for single-family residential use.<sup>22</sup> 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.<sup>23</sup>

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.<sup>24</sup>

<sup>17</sup> Section 163.31771(2)(a), F.S.

<sup>18</sup> American Planning Association, *Accessory Dwelling Units*, available at: <https://www.planning.org/knowledgebase/accessorydwellings/> (last visited Feb. 15, 2025). ADUs are sometimes referred to as “granny flats” to denote their use in accommodating the housing needs of aging parents.

<sup>19</sup> *Id.*

<sup>20</sup> 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. 15, 2025).

<sup>21</sup> Section 163.31771(1), F.S.

<sup>22</sup> Section 163.31771(3), F.S.

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

<sup>24</sup> 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. 15, 2025).

## 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.<sup>25</sup>

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.<sup>26</sup> 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.<sup>27</sup> 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.<sup>28</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 163.31771, F.S., to require, instead of authorizing, 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 and does not apply to a planned unit development or master planned community.<sup>29</sup>

**Section 2** creates s. 420.5098, F.S., to direct the FHFC to establish a model program that uses mezzanine finance<sup>30</sup> to encourage local housing authorities to stimulate the supply of owner-

<sup>25</sup> 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 accessed Feb. 15, 2025).

<sup>26</sup> 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.

<sup>27</sup> Section 420.615(3), F.S.

<sup>28</sup> Section 420.615(6), F.S.

<sup>29</sup> “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.

<sup>30</sup> 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 accessed Feb. 16, 2025).

occupied affordable housing. The FHFC must consult with the Shimberg Center for Housing Studies at the University of Florida on the design of the program, and the FHFC shall select the counties to implement the program. Current law does not contemplate a gap-financing program, such as mezzanine loans, for the construction of owner-occupied housing. The SAIL program is the state's gap financing program for the construction of affordable multi-family housing.

**Section 3** 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 allow such donated land to be used to provide affordable housing for military families receiving the basic allowance for housing.

**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,<sup>31</sup> which for Fiscal Year 2025-2026 is forecast at approximately \$2.4 million.<sup>32</sup> 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.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

None.

<sup>31</sup> FLA. CONST. art. VII, s. 18(d).

<sup>32</sup> 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>.

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, and prospects for more owner-occupied housing with the implementation of mezzanine financing programs.

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.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

More specification may be needed in order for the FHFC to establish the mezzanine finance model program for owner-occupied affordable housing.

**VIII. Statutes Affected:**

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

This bill creates section 420.5098 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.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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