

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/CS/CS/HB 1339 Community Affairs

**SPONSOR(S):** Commerce Committee and Ways & Means Committee and Local, Federal & Veterans Affairs Subcommittee, Yarborough and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/CS/SB 998

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**FINAL HOUSE FLOOR ACTION:** 101 Y's      10 N's      **GOVERNOR'S ACTION:** Pending

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### SUMMARY ANALYSIS

CS/CS/CS HB 1339 passed the House on March 9, 2020. The bill was amended in the Senate on March 10, 2020, and was returned to the House. The House concurred in the Senate amendment and subsequently passed the bill as amended on March 13, 2020.

The bill addresses community development zoning, impact fees, affordable housing, and mobile homes and parks. The bill:

- Authorizes local governments to approve the development of affordable housing on any parcel zoned for residential, commercial, or industrial use.
- Authorizes local governments to create a linkage fee for the purpose of funding affordable housing, and provides that certain developers are entitled to a full offset of the fee.
- Allows "private entities," in addition to counties and municipalities, to issue bonds under the Florida Interlocal Cooperation Act.
- Requires reporting of impact fee data within the annual financial audit report submitted to the Department of Financial Services.
- Requires the evaluation of local government contribution criteria when considering applications submitted for the State Apartment Incentive Loan (SAIL) Program funding.
- Converts the Workforce Housing Innovation Pilot program into a permanent loan program for workforce housing, administered by the Florida Housing Finance Corporation (Florida Housing).
- Establishes workshops for local elected officials serving on affordable housing committees.
- Requires a State Housing Initiatives Partnership (SHIP) Program participant to include affordable housing applications data in its annual report to Florida Housing.
- Provides that for purposes of the SHIP Program, affordable housing also includes housing, that is provided by certain not-for-profit corporations, for persons who have mental health issues, substance abuse problems, and survivors of domestic violence.
- Permits Florida Housing to withhold specified distributions from the SAIL Program to fund the construction of transitional housing for persons aging out of foster care.
- Provides that a building official may not audit a private inspector more than four times a month.
- Requires a mobile home park owner to increase a park's facilities and amenities and amend the prospectus when expanding the park.
- Exempts park owners from the Public Service Commission's water and wastewater regulations.
- Provides that a mobile home owner may be required to install improvements as disclosed in the prospectus, and allows the purchaser of a mobile home to assume the seller's prospectus.
- Permits a park owner to issue a rental increase notice to multiple tenants.
- Permits a mobile home park damaged or destroyed by natural forces to be rebuilt on the same site with the same density as was approved or built before being damaged or destroyed.
- Revises mobile home homeowner association rules related to notifications, bylaws, powers, and disputes.

The bill has fiscal impacts on state and local governments. See Fiscal Comments Section.

The bill provides for an effective date of July 1, 2020.

### I. SUBSTANTIVE INFORMATION

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h1339z.DOCX

**DATE:** 3/23/2020

A. EFFECT OF CHANGES:

**Zoning and Impact Fees for Affordable Housing**

**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.<sup>1</sup> 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.<sup>2</sup> Likewise, municipalities have those governmental, corporate, and proprietary powers 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.<sup>3</sup>

Comprehensive Plans and Land Use Regulation

Local governments regulate aspects of land development by enacting ordinances that address local zoning, rezoning, subdivision, building construction, landscaping, tree protection,<sup>4</sup> sign regulations or any other regulations controlling the development of land.<sup>5</sup> “Land development regulation” is defined to include a general zoning code, but does not include a zoning map, an action that 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.<sup>6</sup>

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 first amends its comprehensive plan. 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.<sup>7</sup> Specified use designations include those for residential, commercial, industry, agriculture, recreation, conservation, education, and public facilities.<sup>8</sup>

State law requires a proposed comprehensive plan amendment to receive public hearings, with the first hearing held by the local planning board.<sup>9</sup> 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.<sup>10</sup>

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<sup>1</sup> Art. VIII, s.1(f), Fla. Const.

<sup>2</sup> Art. VIII, s.1(g), Fla. Const.

<sup>3</sup> Art. VIII, s.2(b), Fla. Const. See also s.166.021(1), F.S.

<sup>4</sup> S. 163.045, F.S., 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.

<sup>5</sup> 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.

<sup>6</sup> S.163.3213(1)(b), F.S.

<sup>7</sup> S. 163.3177(6)(a), F.S.

<sup>8</sup> *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.

<sup>9</sup> Ss. 163.3174(4)(a) and 163.3184, F.S.

<sup>10</sup> S. 163.3184, F.S.

In 2011, the Legislature bifurcated the process for approving comprehensive plan amendments.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup>

Sections 125.66(4), and 166.041(3), 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.

### Affordable Housing

Affordable housing is generally defined in relation to the annual area median household income adjusted for family size. Section 420.0004, F.S., defines the term “affordable” for housing purposes to mean that monthly rents or monthly mortgage payments including taxes, insurance, and utilities do not exceed 30 percent of the median adjusted gross annual income for qualifying households.<sup>14</sup> Eligible households are determined as follows:

- 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;<sup>15</sup>
- 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 metropolitan statistical area, whichever is greater;<sup>16</sup>
- 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;<sup>17</sup>
- 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.<sup>18</sup>

### Statutory Guidance on County and Municipal Affordable Housing

Sections 125.01055 and 166.04151, F.S., authorize 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 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

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<sup>11</sup> Chapter 2011-139, s. 17, Laws of Fla.

<sup>12</sup> *Id.*

<sup>13</sup> S. 163.3184(3) and (4), F.S.

<sup>14</sup> Current limitations are found in the 2019 Income Limits and Rent Limits document produced by the Florida Housing Finance Corporation, available at <https://www.floridahousing.org/owners-and-managers/compliance/income-limits> (last visited February 14, 2020)

<sup>15</sup> S. 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.

<sup>16</sup> S. 420.0004(17), F.S.

<sup>17</sup> S. 420.0004(11), F.S.

<sup>18</sup> S. 420.0004(12), F.S.

general and to increase the production in specific geographic areas that might otherwise not include affordable housing.<sup>19</sup>

Chapter 2019-165, Laws of Fla., (2019 Act) 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<sup>20</sup>

Pursuant to home rule authority, counties and municipalities may impose proprietary fees,<sup>21</sup> regulatory fees, and special assessments<sup>22</sup> 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.<sup>23</sup> Impact fee calculations vary from jurisdiction to jurisdiction and upon the type of 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.

The 2019 Act 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 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.<sup>24</sup> Local governments are prohibited from requiring the payment of impact fees prior to issuing a building permit for the subject property.<sup>25</sup>

Additionally, the 2019 Act 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.<sup>26</sup> 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

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<sup>19</sup> 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. 23, 2020).

<sup>20</sup> Office of Economic and Demographic Research, The Florida Legislature, *2019 Local Government Financial Handbook*, p. 11, <http://edr.state.fl.us/Content/local-government/reports/lgfih19.pdf> (last visited Jan. 23, 2020).

<sup>21</sup> *Id.* Examples of proprietary fees include admissions fees, franchise fees, user fees, and utility fees.

<sup>22</sup> *Id.* at 17. Special assessments are typically used to construct and maintain capital facilities or to fund certain services.

<sup>23</sup> See *supra* note 19.

<sup>24</sup> S. 163.31801(3)(f) and (g), F.S.

<sup>25</sup> S. 163.31801(3)(e), F.S.

<sup>26</sup> S. 163.31801(3)(h) and (i), F.S.

any revenues to offset the impact.<sup>27</sup> The impact fee provisions do not apply to water and sewer connection fees.<sup>28</sup>

### Local Government Financial and Economic Status 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 DFS.<sup>29</sup>

The Bureau of Local Government within DFS has created a web-based AFR system called Local Government Electronic Reporting (LOGGER) where local government entities complete and electronically submit AFRs.<sup>30</sup> DFS personnel verify an entity's data entered in LOGGER 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.<sup>31</sup>

In addition to the above local government financial reporting, ch. 2019-56, Laws of Fla, 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**

The bill amends ss. 125.01055 and 166.04151, F.S., to authorize 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, notwithstanding any other law or local ordinance or regulation to the contrary.

The bill amends ss. 129.03 and 166.241, F.S., to require counties and municipalities to include annual expenditures for affordable housing in their reports to the Office of Economic and Demographic Research. The information must include expenditures for financing, acquisition, construction, reconstruction, and rehabilitation of affordable housing and must indicate the source of such funds as federal, state, local, or other. The information must be included in the report of economic status information annually beginning October 15, 2020.

The bill amends s. 163.31801, F.S., to require the reporting of impact fee data within the annual financial report specified under s. 218.32, F.S. The local government must report the specific purpose of an impact fee including the specific infrastructure needs that the fee will be used for; a description of

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<sup>27</sup> S. 163.31801(8), F.S.

<sup>28</sup> S. 163.31801(9), F.S.

<sup>29</sup> See Department of Financial Services Bureau of Financial Reporting, *Uniform Accounting System Manual for Florida Local Governments* (2014), [https://www.myfloridacfo.com/Division/AA/Manuals/2014UASManual-7-31-15\\_FINAL.pdf](https://www.myfloridacfo.com/Division/AA/Manuals/2014UASManual-7-31-15_FINAL.pdf) (last visited Jan. 23, 2020).

<sup>30</sup> LOGGER, <https://apps.fldfs.com/LocalGov/Reports/> (last visited Jan. 23, 2020).

<sup>31</sup> See Florida Auditor General, *Local Government Financial Reporting System: Performance Audit Report 2019-028* (Sep. 2019), [https://flauditor.gov/pages/pdf\\_files/2019-028.pdf](https://flauditor.gov/pages/pdf_files/2019-028.pdf) (last visited Jan. 23, 2020).

the impact fee schedule policy and fee calculation methods; the amount assessed for each purpose and type of dwelling; the total amount of impact fees charged by type of dwelling; and each exception and waiver of impact fees for affordable housing.

## **Linkage Fees**

### **Present Situation**

New developments, such as commercial, industrial, high-end residential, and mixed-use, can increase the number of low wage jobs in an area, and thus increase the need for affordable housing. Linkage fees imposed by counties and municipalities on new developments are one method of increasing local resources to help defray the costs of building the additional affordable housing required to meet the need created by the new developments. The amount of the linkage fees and timing of collection are within the discretion of the county or municipality choosing to impose the fees.<sup>32</sup>

In order to adopt a linkage fee for affordable housing, a county or municipality must establish an essential nexus between the fee and the need for additional affordable housing created by new developments. The fee must be used for the additional affordable housing, and may not exceed the costs to build the additional affordable housing.

Federal courts have ruled that a restriction on real property, including a fee on a new development, triggers the takings clause of the fifth amendment of the U.S. Constitution. However, a restriction on a new development will not be considered a taking if the restriction:<sup>33</sup>

- Has an essential nexus between the restriction and a legitimate government interest; and
- The restriction is proportional to the effects on the legitimate government interested created by the new development.

The Florida Supreme Court has ruled that local governments may impose a fee on new developments so long as the fee is related to a need for additional facilities created by the new developments, the fees do not exceed the costs of additional facilities, and the fees are used for the additional facilities.<sup>34</sup>

Linkage fees have been established by several municipalities in Florida. These linkage fees range from \$0.37 per square foot up to \$2.42 per square foot for new developments such as:<sup>35</sup>

- Commercial;
- Industrial;
- Residential; and
- Public Lodging.

### **Inclusionary Housing Ordinances**

The 2019 Act authorized counties and municipalities to continue using inclusionary housing ordinances that require a developer to either provide a specific number or percentage of affordable housing units within a development or to contribute to a housing fund or other alternative. In exchange, however, a county or municipality must provide incentives to fully offset all costs to the developer for its affordable housing contribution. Incentives may include:

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<sup>32</sup> Florida Housing Coalition, Linkage Fees: *Local Funding for Affordable Housing*, [https://growth-management.alachuacounty.us/formsdocs/Linkage\\_Fees\\_Short\\_Paper\\_Florida\\_Housing\\_Coalition.pdf](https://growth-management.alachuacounty.us/formsdocs/Linkage_Fees_Short_Paper_Florida_Housing_Coalition.pdf)

<sup>33</sup> *Nollan v. California Coastal Commission*, 487 U.S. 825, 834-836 (U.S. 1987); *Dolan v. City of Tigard*, 512 U.S. 374, 391 (U.S. 1994); *Commercial Builders of Northern California v. City of Sacramento*, 941 F. 2d 872, 875, (9th Circuit of Appeals 1991).

<sup>34</sup> *Contractors and Builders Association of Pinellas County v. City of Dunedin*, 329 So. 2d 314 (Fla. 1976).

<sup>35</sup> City of Coconut Creek Land Development Code, § Division 5, Sec. 13-112; Town of Jupiter Land Development Code, § Div. 44, Sec. 27-3191; City of Winter Park Code of Ordinances, § Ch. 2, Art. VIII, Sec. 2-202.

- Allowing the developer density or intensity bonus incentives or more floor space than allowed under the current or proposed future land use designations;
- Reducing or waiving fees, such as impact fees or water and sewer charges; or
- Other types of incentives.

### **Effect of the Bill**

The bill provides guidance and standards for counties and municipalities to continue requiring certain linkage fees. Linkage fees may be a flat fee or a percentage based fee calculated on the basis of the number of approved dwelling units, the amount of approved square footage, or another determination.

In exchange, however, a county or municipality must provide incentives to fully offset all costs to the developer of a residential or mixed-used residential development for its payment of a linkage fee.

Incentives may include:

- Allowing the developer density or intensity bonus incentives or more floor space than allowed under the current or proposed future land use designations;
- Reducing or waiving fees, such as impact fees or water and sewer charges; or
- Other types of incentives.

### **Interlocal Agreements**

#### **Present Situation**

Section 163.01, F.S., also known as the Florida Interlocal Cooperation Act of 1969, enables local governments to cooperate with other localities on a basis of mutual advantage to provide services and facilities that will best address the geographic, economic, population, and other factors that affect the needs and development of local communities.<sup>36</sup> The act authorizes public agencies<sup>37</sup> to exercise jointly, by contract in the form of an interlocal agreement, any power, privilege, or authority shared by those agencies in order to more efficiently provide services and facilities.<sup>38</sup>

An interlocal agreement may provide for a separate legal or administrative entity to administer or execute the agreement, which may be a commission, board, or council constituted pursuant to the agreement.<sup>39</sup>

A separate legal or administrative entity created by an interlocal agreement is authorized to:<sup>40</sup>

- Make and enter into contracts;
- Employ agencies or employees;
- Acquire, construct, manage, maintain, or operate buildings, works, or improvements;
- Acquire, hold, or dispose of property; and
- Incur debts, liabilities, or obligations which do not constitute the debts, liabilities, or obligations of any of the parties to the agreement.

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<sup>36</sup> S. 163.01(2), F.S.

<sup>37</sup> S. 163.01(3)(b), F.S. "Public agency" is defined as a A political subdivision, agency, or officer of this state or of any state of the United States, including, but not limited to, state government, county, city, school district, single and multipurpose special district, single and multipurpose public authority, metropolitan or consolidated government, a separate legal entity or administrative entity [that is authorized to administer or execute the agreement], an independently elected county officer, any agency of the United States Government, a federally recognized Native American tribe, and any similar entity of any other state of the United States.

<sup>38</sup> S. 163.01(5), F.S.

<sup>39</sup> S. 163.01(7)(a), F.S.

<sup>40</sup> S. 163.01(7)(b), F.S.

A separate legal entity created by interlocal agreement and controlled by a municipality, a county, or a combination thereof, may exercise all powers in connection with the authorization, issuance, and sale of bonds for the purpose of financing or refinancing any capital projects.<sup>41</sup>

Such bonds are considered as issued on behalf of the counties or municipalities that enter into loan agreements with the entity, for the bond proceeds. The proceeds may be loaned to counties, municipalities, or a combination of both, whether or not such counties or municipalities are members of the entity issuing the bonds.

Issuing such bonds to fund a loan program for subsequently identified capital projects is deemed a paramount public purpose.<sup>42</sup>

### Self-Liquidating Projects

A project is “self-liquidating” if the revenues and earnings from the project and other special funds pledged by the governing body authorizing the project, will be sufficient to pay the cost of maintaining, repairing, and operating the project and to pay the principal and interest of revenue bonds issued to pay the cost of the project.<sup>43</sup>

Revenue bonds are obligations issued by a county or municipality to pay the cost of a self-liquidating project or improvements, or combination of projects or improvements, and payable from the earnings of such project, and any other special funds pledged as additional security by the government issuing the bonds.<sup>44</sup>

### Effect of the Bill

The bill allows a separate legal entity created by interlocal agreement that issues revenue bonds to loan such bond proceeds to counties, municipalities, or a private entity for “self-liquidating” projects. This includes private entities whether or not they are located within a county or municipality that is a member of the entity issuing the bonds. The paramount purpose of the statute is expanded to include making loans to private entities.

### Accessory Dwelling Units

#### **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.<sup>45</sup> The Legislature finds that encouraging local governments to permit ADUs to increase the availability of affordable rentals serves a public purpose.<sup>46</sup> 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.<sup>47</sup> Each ADU allowed by an ordinance must count towards the affordable housing component of the housing element in the local government’s comprehensive plan.<sup>48</sup> An application for a building permit to construct such ADUs must

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<sup>41</sup> S. 163.01(7)(d), F.S.

<sup>42</sup> *Id.*

<sup>43</sup> S. 159.02(5), F.S.

<sup>44</sup> Ss. 159.02(6) and 159.03(2), F.S. See *Sanibel-Captiva Taxpayers’ Association v. County of Lee*, 132 So. 2d 334 (Fla. 1961). S. 189.031(3)(b), F.S. A special district may issue revenue bonds only if expressly authorized in its charter.

<sup>45</sup> S.163.31771(2)(a), F.S.

<sup>46</sup> S. 163.31771(1), F.S.

<sup>47</sup> S.163.31771(3), F.S.

<sup>48</sup> S. 163.31771(5), F.S.



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>49</sup>

In 2019, the Florida Housing Coalition, the entity currently providing technical assistance and training for the Catalyst Program under s. 420.531, F.S., published the *Accessory Dwelling Unit Guidebook*.<sup>50</sup> 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 ADUs 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**

The bill allows a local government to adopt an ordinance to allow ADUs in any area zoned for single family residential use. The bill removes the requirement that such an ordinance be conditioned upon a finding that there is a shortage of affordable rentals within the local jurisdiction.

## **State Apartment Incentive Loan Program: Local Government Contributions**

### **Present Situation**

The State Apartment Incentive Loan (SAIL) Program<sup>51</sup> 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.<sup>52</sup>

### **Effect of the Bill**

The bill amends provisions of the SAIL Program 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. The bill also modifies the requirement relating to a sponsor's prior experience to provide that the sponsor cannot be required to have previously worked with Florida Housing in order to qualify for the program. This modification broadens the eligible pool of sponsors beyond those who already work with Florida Housing.

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<sup>49</sup> S. 163.31771(4), F.S. The parameters defining the various income designations are specified in s 420.0004, F.S.

<sup>50</sup> See Florida Housing Coalition, *Accessory Dwelling Unit Guidebook*, (May 2019) <https://www.flhousing.org/wp-content/uploads/2019/08/ADU-Guidebook.pdf> (last visited Jan. 23, 2020).

<sup>51</sup> 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. 23, 2020).

<sup>52</sup> S.420.5087(6)(c), F.S.

## Local Housing Distributions for Persons Aging out of Foster Care

### Present Situation

#### Affordable Housing Funding for Special Needs Populations

Section 420.0004(13), F.S., defines a person with special needs as:

an adult person requiring independent living services in order to maintain housing or develop independent living skills and who has a disabling condition; a young adult formerly in foster care who is eligible for services under s. 409.1451(5); a survivor of domestic violence as defined in s. 741.28; or a person receiving benefits under the Social Security Disability Insurance (SSDI) program or the Supplemental Security Income (SSI) program or from veterans' disability benefits.

During the first 6 months of loan or loan guarantee availability, a percentage of SAIL funds must be reserved for use by sponsors who set-aside at least 20 percent of the housing units in a project for specified tenant groups. Currently, the reservation of funds within each notice of fund availability to the specified tenant groups is as follows:<sup>53</sup>

- For commercial fishing workers and farmworkers the reservation of funds may not be less than 5 percent of the funds available at that time; and
- For persons with special needs, families, persons who are homeless, and elderly persons the reservation of funds may not be less than 10 percent of the funds available at that time.

Section 420.507(48), F.S., requires Florida Housing to reserve up to 5 percent of certain annual allocations for high-priority affordable housing projects for veterans and their families, and other special needs populations. Florida Housing must reserve an additional 5 percent of each allocation for affordable housing projects directed to persons with disabling conditions.

According to the statewide 2019 Rental Market Study, an estimated 104,273 cost burdened renter households receive disability-related Social Security, SSI,<sup>54</sup> and veterans' benefits statewide.<sup>55</sup> Based on service use, an estimated 7,836 survivors of domestic violence and 2,574 youth exiting foster care are in need of affordable housing.<sup>56</sup>

#### Services and Support for Persons Aging Out of Foster Care

The Department of Children and Families (DCF) is responsible for administering an array of independent living services to eligible young adults ranging in ages 18-22 (not yet 23), including supports in making the transition to self-sufficiency.<sup>57</sup>

Extended Foster Care (EFC) provides eligible young adults the option of remaining in foster care until the age of 21 or until the age of 22 if they have a disability. EFC is a voluntary program that requires the young adult to agree to participate in school, work, or a work training program in accordance with federal and state guidelines. Exceptions and accommodations are made for young adults with a documented disability.<sup>58</sup>

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<sup>53</sup> S. 420.5087(3), F.S.

<sup>54</sup> Supplemental Security Income. See generally 42 U.S.C. §§1381-1385 (Title XVI of the Social Security Act).

<sup>55</sup> Shimberg Center for Housing Studies, University of Florida, 2019 Rental Market Study, p. 2 (May 2019), [http://www.shimberg.ufl.edu/publications/RMS\\_2019.pdf](http://www.shimberg.ufl.edu/publications/RMS_2019.pdf) (last visited Jan. 23, 2020). The Rental Market Study defines 'cost burdened' to mean the household is paying at least 40 percent of income toward gross rent. See p. 5.

<sup>56</sup> *Id.*

<sup>57</sup> Ss. 39.6251 & 409.1451, F.S.

<sup>58</sup> Department of Children and Families, *Independent Living Services Annual Report* (Jan. 31, 2019), <https://www.myflfamilies.com/service-programs/child-welfare/docs/2019LMRs/Independent%20Living%20Services%202018%20Annual%20Report.pdf> (last visited Jan. 23, 2020).

## Effect of the Bill

The bill authorizes Florida Housing to withhold a portion of the annual SAIL funds reserved for sponsors who set-aside housing for persons with special needs to provide funding for the development of newly constructed permanent rental housing on a campus that provides housing for persons in foster care or persons aging out of foster care under the Road-to-Independence Program.<sup>59</sup> The housing must promote and facilitate access to community-based supportive, educational, and employment services and resources that assist persons aging out of foster care to successfully transition to independent living and adulthood. Florida Housing must consult with the DCF to create minimum criteria for such housing.

## Community Workforce Housing Innovation Pilot Program

### Present Situation

The Community Workforce Housing Innovation Pilot Program<sup>60</sup> (CWHIP) was created to provide 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<sup>61</sup> and 2007.<sup>62</sup>

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.<sup>63</sup>

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:<sup>64</sup>

- 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 percent 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 percent of the units are set aside for workforce housing and at least 50 percent of the units are set aside for essential services.<sup>65</sup>

Florida Housing administered two rounds of funding for CWHIP: \$50 million in October of 2006 and \$62.4 million in December of 2007.<sup>66</sup>

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<sup>59</sup> S. 409.1451, F.S. The Road-to-Independence Program provides financial assistance for educational and vocational training, and aftercare services, such as mental health services and career skills training, for persons who have aged out of foster care and are between the ages of 18 and 23.

<sup>60</sup> Ch. 2006-69, Laws of Fla.

<sup>61</sup> *Id.* at s. 33

<sup>62</sup> Specific Appropriations 1694, ch. 2007-72, Laws of Fla. Fiscal Year 2006 and 2007 appropriations were nonrecurring and no additional funds have been appropriated since.

<sup>63</sup> S. 420.5095(3)(a), F.S.

<sup>64</sup> S. 420.5095(8), F.S.

<sup>65</sup> S. 420.5095(11), F.S.

<sup>66</sup> See Florida Housing Finance Corporation, *2007 Annual Report*, p. 21, and *2008 Annual Report*, p. 11, <http://www.floridahousing.org/docs/default-source/data-docs-and-reports/annual-reports/2007AnnualReport.pdf> and

## Effect of the Bill

The bill transitions 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 must 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 the local jurisdiction has adopted or is committed to adopting incentives, contributions, or other funding to promote the development and financial viability of such projects.

## **Affordable Housing Workshops for Locally Elected Officials utilizing Catalyst and SHIP**

### 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 (SHIP), and other affordable housing programs.<sup>67</sup> Florida Housing currently contracts with the Florida Housing Coalition to provide Catalyst Program training and technical assistance.<sup>68</sup>

The Florida Housing Coalition’s technical assistance team consists of a geographically dispersed network of personnel providing on-site and telephone/e-mail technical assistance as well as training through workshops and webinars.<sup>69</sup> This technical assistance supports 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

Administered by Florida Housing, the SHIP Program provides funds to all 67 counties and 52 Community Development Block Grant entitlement cities on a population-based formula to finance and preserve affordable housing based on locally adopted housing plans.<sup>70</sup>

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[http://www.floridahousing.org/docs/default-source/data-docs-and-reports/annual-reports/2008AnnualReport\\_CDfile.pdf](http://www.floridahousing.org/docs/default-source/data-docs-and-reports/annual-reports/2008AnnualReport_CDfile.pdf) (last visited Jan. 23, 2020).

<sup>67</sup> 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.

<sup>68</sup> Contract for Affordable Housing Catalyst Services between Florida Housing Finance Corporation and the Florida Housing Coalition, Inc., (July 1, 2019) [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](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 23, 2020).

<sup>69</sup> The 2019/2020 Catalyst Training Schedule, <https://www.floridahousing.org/docs/default-source/programs/special-programs/catalyst/training-schedule-catalyst-2019-2020.pdf?sfvrsn=2> (last visited Jan. 23, 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](https://www.flhousing.org/events/list/?tribe_paged=2&tribe_event_display=list) (last visited Jan. 23, 2020).

<sup>70</sup> See ss. 420.907-420.9089, F.S.

The program targets very-low, low, and moderate-income families. SHIP is funded through a statutory distribution of documentary stamp tax revenues that are deposited into the Local Government Housing Trust Fund.

Subject to specific appropriation, funds are distributed quarterly to local governments participating in the program.<sup>71</sup> Funds are expended according to each local government's adopted Local Housing Assistance Plan (LHAP), which details the housing strategies for that particular government.<sup>72</sup> 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.<sup>73</sup> The strategies must:

- Assure that permits for affordable housing projects are expedited;
- Establish an ongoing process to review local policies, ordinances, regulations, and plan provisions that actually increase the cost of housing; and
- Include a schedule for implementing the incentive strategies.<sup>74</sup>

Local governments must appoint members to an Affordable Housing Advisory Committee (AHAC) that triennially reviews the established policies and procedures, ordinances, land development regulations, and adopted local government comprehensive plan.<sup>75</sup> The AHAC is comprised of local citizens representing a range of affordable housing stakeholders.<sup>76</sup> At a minimum, each AHAC must submit a report to the local governing body on certain affordable housing incentives including:<sup>77</sup>

- 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<sup>78</sup> 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 created to evaluate affordable housing policy issues and programs.<sup>79</sup> This commission is charged with recommending public policy changes to the Governor and Legislature to stimulate community development and revitalization, as well as promoting the production, preservation and maintenance of decent, affordable housing for all Floridians. The Commission is comprised of 21 members meeting specific statutory criteria, all of whom are appointed by the Governor.<sup>80</sup> Florida Housing provides administrative support to the Commission, but the Commission has not received funding or gubernatorial appointments since 2008.<sup>81</sup>

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<sup>71</sup> S. 420.9073, F.S.

<sup>72</sup> S.420.9075, F.S.

<sup>73</sup> S. 420.9076(1), F.S.

<sup>74</sup> S. 420.9071(16), F.S.

<sup>75</sup> S. 420.9076(4), F.S.

<sup>76</sup> S.420.9076(2), F.S.

<sup>77</sup> S. 420.9076(4), F.S.

<sup>78</sup> Pursuant to s. 420.9073(3), F.S., the minimum local housing distribution is \$350,000.

<sup>79</sup> Chapter 86-192 Laws of Fla.

<sup>80</sup> S. 420.609, F.S.

<sup>81</sup> Commission Annual Reports submitted from 1987-2008, <http://apps.floridahousing.org/StandAlone/AHSC/AHSC-AnnualReports.htm> (last visited Jan. 23, 2020).

In 2017, the Legislature created a statewide Affordable Housing Workgroup (Workgroup).<sup>82</sup> 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 addressing the state's affordable housing needs, including strategies and pathways for low-income housing in the state.<sup>83</sup>

## **Effect of the Bill**

The bill amends s. 420.531, F.S., to establish biannual regional workshops for locally elected officials serving on affordable housing advisory committees as provided for SHIP in s. 420.9076, F.S. The entity providing statewide training and technical assistance for the Catalyst Program will administer and conduct the workshops with the intent of facilitating peer-to-peer identification and sharing of best affordable housing practices. Workshops must be conducted through teleconferencing or other technological means. The entity providing the statewide training and technical assistance must provide annual reports summarizing the deliberations, actions, and recommendations of each region, as well as attendance records of locally elected officials, to the President of the Senate, the Speaker of the House of Representatives, and Florida Housing by March 31 of the following year.

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

The bill amends s. 420.9071, F.S., to provide that for purposes of the SHIP Program, affordable housing also includes housing provided by a not-for-profit corporation that provides supportive housing for persons who suffer from mental health issues, substance abuse, or domestic violence and provides on-premises social and community support services. The not-for-profit corporation must derive at least 75 percent of its annual revenues from contracts or services provided to a state or federal agency for low-income persons and low-income households.

The bill 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 biannual workshops on affordable housing best practices. If a locally elected official fails to attend three consecutive regional workshops, Florida Housing may withhold the participating SHIP entity's funds pending the official's attendance at the next regularly scheduled biannual 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.

## **Annual SHIP Entity Reporting Submissions to Florida Housing**

### **Present Situation**

Each local government participating in SHIP must annually submit a report of its affordable housing programs and accomplishments to Florida Housing. The local government's chief elected official or his

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<sup>82</sup> Chapter 2017-71, s. 46, Laws of Fla. Legislation creating the workgroup designated Florida Housing Finance Corporation as the administering entity.

<sup>83</sup> 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. 24, 2020).

or her designee must certify the report as accurate and complete. Among the many items included in the report are:<sup>84</sup>

- The number of households served by income category, age, family size, and race, and data regarding any special needs populations.
- The number of units and the average cost of producing units under each local housing assistance strategy.
- By income category, the number of mortgages made, the average mortgage amount, and the rate of default.
- A description of the status of implementation of each local housing incentive strategy.

After reviewing the report, if Florida Housing determines a violation of the criteria for a LHAP may have occurred, 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.<sup>85</sup> If a violation is deemed to have occurred, the distribution of program funds to the local government must be suspended until the violation is corrected.<sup>86</sup>

### **Effect of the Bill**

The bill amends s. 420.9075, F.S., to require a SHIP entity's annual program reporting to Florida Housing include data on the number of affordable housing applications submitted, the number approved, and the number denied.

### **Material Misrepresentations or Fraudulent Actions by Applicants**

#### **Present Situation**

Section 420.507(35), F.S., authorizes Florida Housing to preclude any applicant or affiliate of an applicant from further participation in any Florida Housing program if that applicant or affiliate made a material misrepresentation or engaged in fraudulent action in connection with any application for a program administered by Florida Housing.

If the Florida Housing board of directors determines that an applicant or any principal, financial beneficiary, or affiliate of the applicant has made a material misrepresentation or engaged in fraudulent actions in connection with any application for a Florida Housing program, then an applicant will be ineligible for funding or allocation in any program administered by Florida Housing.<sup>87</sup>

There is a rebuttable presumption that an applicant has engaged in fraudulent actions if the applicant or its principal, financial beneficiary, or affiliate has:<sup>88</sup>

- Been convicted of fraud, theft, or misappropriation of funds;
- Been excluded from federal or Florida procurement programs for any reason;
- Been convicted of a felony in connection with any Florida Housing program; or
- Offered or given consideration with respect to a local contribution, other than consideration to provide affordable housing.

The period of time that an applicant may be ineligible may be for a specific period of time or permanent in nature. To establish the duration of the ineligibility, the board must consider the facts and circumstances, inclusive of the applicant's compliance history, the type of misrepresentation or fraud committed, and the degree of harm to the Florida Housing programs that has been or may be done.<sup>89</sup>

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<sup>84</sup> S. 420.9075(10), F.S.

<sup>85</sup> S. 420.9075(13), F.S.

<sup>86</sup> *Id.*

<sup>87</sup> Rule 67-48.004(2), F.A.C.

<sup>88</sup> *Id.* at (2)(a).

<sup>89</sup> *Id.* at (2)(c).

Before making a determination that an applicant has made a material misrepresentation or engaged in fraudulent actions, Florida Housing must issue and serve an administrative complaint, which must provide reasonable notice to the applicant of the facts or conduct that warrants the intended action. The notice must specify the proposed duration of ineligibility and advise the applicant of the right to request an administrative hearing pursuant to ss. 120.569 and 120.57, F.S.<sup>90</sup> Upon service of the complaint, all pending transactions under any Florida Housing program involving the applicant or its principal, financial beneficiary, or affiliate are suspended until a final order is issued or the administrative complaint is dismissed.<sup>91</sup>

### **Effect of Proposed Changes**

The bill creates s. 420.518, F.S., that allows Florida Housing to preclude any applicant or affiliate of an applicant from participation in any Florida Housing program under certain conditions. An applicant or affiliate can be precluded if the applicant or affiliate has:

- Made a material misrepresentation or engaged in fraudulent actions in connection with any Florida Housing program.
- Been convicted or found guilty of, or pled guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction that directly relates to:
  - Financing, construction, or management of affordable housing; or
  - Fraudulent procurement of state or federal funds.
- Been excluded from any federal funding program related to housing or Florida procurement program.
- Offered or given consideration with respect to a local contribution, other than consideration to provide affordable housing.
- Demonstrated a pattern of noncompliance and a failure to correct any such noncompliance after notice from Florida Housing in the construction, operation, or management of one or more developments funded through a Florida Housing program.

Upon a determination by the board of directors of Florida Housing to preclude an applicant or affiliate from participation in any Florida Housing program, the board may issue an order taking certain actions:

- Preclude the applicant or affiliate from applying for funding from any Florida Housing program for a specified period of time.
- Revoke any funding previously awarded for any development for which construction or rehabilitation has not yet commenced.

The period of time that an applicant or affiliate may be precluded may be for a specific period of time or permanent. To establish the duration of the ineligibility, the board must consider the facts and circumstances, inclusive of the applicant's compliance history, the type of action for which the applicant or affiliate is being precluded, and the degree of harm to the Florida Housing programs that has been or may be done.

Before an order by the Florida Housing board becomes final, an administrative complaint must be served on the applicant, its affiliate, or its registered agent. The complaint must provide notification of the findings of the board, the intended action, and the opportunity to request an administrative hearing pursuant to ss. 120.569 and 120.57, F.S.

Upon the service of the complaint, any funding, allocation of federal housing credits, credit underwriting procedures, or application review for any development for which construction or rehabilitation has not

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<sup>90</sup> Section 120.569, F.S., provides the procedures under the Administrative Procedures Act which apply to all proceedings in which the substantial interests of a party are determined by an agency. Section 120.57, F.S., provides additional procedures, such as whenever there is a disputed issue of material facts. Chapter 120, F.S., applies to Florida Housing, pursuant to s. 420.504(2), F.S.

<sup>91</sup> Rule 67-48.004(2)(b), F.A.C.



yet occurred is suspended. The suspension is effective from the date on which the complaint is served until an order issued by Florida Housing related to the complaint becomes final.

## Private Providers

### Present Situation

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public's health, safety, and welfare.<sup>92</sup> Every local government must enforce the Florida Building Code and issue building permits.<sup>93</sup> It is unlawful for an entity to construct, alter, repair, or demolish any building without first obtaining a building permit from the local enforcing agency.<sup>94</sup>

Any construction work that requires a building permit also requires plans and inspections by a local building official to ensure the work complies with the building code. The building code requires certain building, electrical, plumbing, mechanical, and gas inspections. In addition to required inspections, a local building official may require other inspections of any work to ensure it complies with the building code.<sup>95</sup>

In 2002, the Legislature created s. 553.791, F.S., allowing contractors and property owners to hire licensed building code administrators, engineers, and architects, referred to as private providers, to review building plans, perform building inspections, and prepare certificates of completion.

Private providers are able to approve building plans and perform building code inspections as long as the plans approval and inspections are within the scope of the provider's license. Licensed building inspectors and plans examiners may perform inspections for additions and alterations that are limited to 1,000 square feet or less in residential buildings.

A building official is entitled to audit a private provider to ensure the private provider has reviewed the building plans and is performing the required inspections. A building official **may not audit a private provider more than four times in a calendar** year unless the building official determines the condition of a building constitutes an immediate threat to public safety and welfare. A building official may also issue a stop work order at any time if he or she determines any condition of the construction poses an immediate threat to public safety and welfare.<sup>96</sup>

### Effect of the Bill

The bill provides that a building official **may not audit a private provider more than four times in a month** instead, of more than four times in a calendar year. A building official may audit a private provider more than four times if the building official determines the condition of a building constitutes an immediate threat to public safety and welfare. A building official may also issue a stop work order at any time if he or she determines any condition of the construction poses an immediate threat to public safety and welfare.

### Mobile Homes

Chapter 723, F.S., the "Florida Mobile Home Act" (Mobile Home Act) addresses the unique relationship between a mobile home owner and a mobile home park owner.<sup>97</sup> The provisions in the Mobile Home Act 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.<sup>98</sup>

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<sup>92</sup> S. 553.72, F.S.

<sup>93</sup> Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

<sup>94</sup> See ss. 125.56(4)(a) and 553.79(1), F.S.

<sup>95</sup> Ss. 107, 110.1, and 110.3, Sixth edition of the Florida Building Code.

<sup>96</sup> S. 553.791(1), (13), and (18), F.S.

<sup>97</sup> S. 723.004, F.S.

<sup>98</sup> S. 723.002(1), F.S. The Mobile Home Act does not apply to tenancies in which both the mobile home and the mobile home lot are rented or leased by the mobile home resident.

The courts recognize the relationship between the mobile home park owner and the mobile home owner is not simply one of landlord and tenant but “a hybrid type of property relationship” in which both have “basic property rights which must reciprocally accommodate and harmonize.”<sup>99</sup> This is due to the very nature of the mobile home:

Mobile homes come to rest in established parks, the wheels are generally removed, they are anchored to the ground, because of forces of the wind, connections with electricity, water and sewerage are made, awnings are frequently attached, and to a large degree they lose their mobility except, unless, and until the wheels are restored, disruption of electrical, water and sewer connections is had and a certain amount of dismantling and crating is had, all at a substantial expense of the owner of the mobile home who had bought such home with the expectation of being able to remain in the park for a not unreasonable time so long as he abides by all the reasonable regulations established by the park owner. The removal from one park to another becomes more than a mere hitching to a truck or tractor and pulling it away. To a large degree, mobile homes are occupied by people in the lower income brackets who cannot spend several hundred dollars at the mere whim of a lessor park.<sup>100</sup>

Mobile homes are not “mobile” in the same sense as are recreational vehicles or camper trailers.<sup>101</sup> “Because of the difficulties inherent in moving the home from one settled location to another...it is hard to imagine a situation where the park owner and the tenants are in an equal bargaining position on rent increases.”<sup>102</sup> To better balance the interests of the park owner and the home owner, the Legislature enacted laws culminating in the Mobile Home Act<sup>103</sup>

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.<sup>104</sup>
- “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.<sup>105</sup>

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 the mobile home park owned.<sup>106</sup> 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.<sup>107</sup> 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.<sup>108</sup>

## **Mobile Home Dealer Display Requirements**

### **Present Situation**

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<sup>99</sup> *Stewart v. Green*, 300 So. 2d 889, 892 (Fla. 1974).

<sup>100</sup> *Palm Beach Mobile Homes v. Strong*, 300 So. 2d 881, 886 (Fla. 1974).

<sup>101</sup> *Stewart v. Green, id.*

<sup>102</sup> *Belcher v. Kier*, 558 So.2d 1039, 1042 (Fla. 2d DCA 1990) (citation omitted).

<sup>103</sup> *Herrick v. Florida Dept. of Business Regulation*, 595 So.2d 148, 152 (Fla. 1st DCA 1992).

<sup>104</sup> S. 723.003(12), F.S.

<sup>105</sup> S. 723.003(11), F.S.

<sup>106</sup> S. 723.007(1), F.S.

<sup>107</sup> *Id.*

<sup>108</sup> S. 723.007(2), F.S.

A mobile home dealer must hold a license issued by the DHSMV.<sup>109</sup> 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.”<sup>110</sup> The term also includes a mobile home broker.<sup>111</sup> 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.<sup>112</sup>

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.<sup>113</sup>

### **Effect of the Bill**

The bill 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.

### **Recreational Vehicle Dealers**

#### **Present Situation**

A recreational vehicle dealer must hold a license issued by the DHSMV.<sup>114</sup> The term “dealer” means any person engaged in the business of buying, selling, or dealing in recreational vehicles or offering or displaying recreational vehicles for sale. The term does not include banks, credit unions, and finance companies that acquire recreational vehicles as an incident to their regular business and does not include mobile home rental and leasing companies that sell recreational vehicles to dealers licensed under s. 320.77, F.S.

A recreational vehicle is a type of motor vehicle primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle.<sup>115</sup> The basic “entities” of a recreational vehicle include the “park trailer,” which is a transportable unit that has a body width not exceeding 14 feet and which is built on a single chassis and is designed to provide seasonal or temporary living quarters when connected to utilities necessary for operation of installed fixtures and appliances.<sup>116</sup>

A recreational vehicle dealer must be insured under a garage liability insurance policy that includes a minimum \$25,000 combined single-limit liability coverage, including bodily injury and property damage protection, and \$10,000 personal injury protection.<sup>117</sup>

### **Effect of the Bill**

The bill amends s. 320.771(3)(j), F.S., to exempt a recreational vehicle dealer from the requirement to be insured under a garage liability insurance policy if the dealer sells only park trailers.

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<sup>109</sup> S. 320.77(2), F.S.

<sup>110</sup> S. 320.77(1)(a), F.S.

<sup>111</sup> See s. 320.77(1)(b), F.S., defining the term “mobile home broker.”

<sup>112</sup> S. 320.77(1)(a), F.S.

<sup>113</sup> S. 320.77(3)(h), F.S.

<sup>114</sup> S. 320.771(2), F.S.

<sup>115</sup> See s. 320.01(1) (b), F.S.

<sup>116</sup> S. 320.01(1) (b) 7., F.S.

<sup>117</sup> S.320.771 (3) (j), F.S.

## **Repair and Remodeling Codes for Mobile and Manufactured Homes**

### **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 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 320.8232(2), F.S., uses the term “Repair and Remodeling Code” and not the term “Mobile Home Repair and Remodeling Code.”

Section 320.822(1), 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**

The bill 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.”

The bill amends s. 320.8232, F.S., to require the Mobile and Manufactured Home Repair and Remodeling Code to be a uniform code. 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 as it relates to Mobile Home Parks and Water and Wastewater Systems**

## **Present Situation**

Currently, the Public Service Commission (PSC) has jurisdiction over 150 water and wastewater investor-owned utilities (IOUs) in 38 of 67 counties in Florida.<sup>118</sup>

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).<sup>119</sup>

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.” Also exempted from regulation is 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.<sup>120</sup>

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.<sup>121</sup>
- “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.<sup>122</sup>
- “Lot rental amount” means all financial obligations, except user fees, which are required as a condition of the tenancy.<sup>123</sup>
- “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.<sup>124</sup>

## **Effect of the Bill**

The bill includes the reselling of “wastewater service” within the current exemption from regulation by the PSC.

The bill also exempts from regulation by the PSC the owner of a mobile home park operating both as a mobile home park and a mobile home subdivision, who provides service within the park and subdivision to a combination of both tenants and lot owners, provided that the service to tenants is without specific compensation.

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<sup>118</sup> Public Service Commission, *Data of the Florida Utility Industry*, p. 31 (June 2019), <http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Factsandfigures/June%202019.pdf> (last visited Jan. 23, 2020).

<sup>119</sup> See s. 367.022, F.S.

<sup>120</sup> S. 367.022(9), F.S.

<sup>121</sup> S. 723.003(14), F.S.

<sup>122</sup> S. 723.003(10), F.S.

<sup>123</sup> S. 723.003(6), F.S.

<sup>124</sup> S. 723.003(21), F.S.

## Prospectus or Offering Circular and Rental Agreements

### Present Situation

#### Prospectus

The mobile home park prospectus is the document that governs the landlord-tenant relationship between the park owner and the mobile home owner.<sup>125</sup> The prospectus or offering circular, together with its attached exhibits, is a disclosure document intended to afford protection to homeowners and prospective homeowners in a mobile home park. The purpose of the document is to disclose the representations of the mobile home park owner concerning the operations of the mobile home park.<sup>126</sup>

The prospectus must include a description of the mobile home park property, including, but not limited to:<sup>127</sup>

- The number of lots in each section, the approximate size of each lot, the setback requirements, and the minimum separation distance between mobile homes as required by law.
- The maximum number of lots that will use shared facilities of the park; and, if the maximum number of lots will vary, a description of the basis for variation.

The prospectus must also include a description of all improvements, whether temporary or permanent, which are required to be installed by the mobile home owner as a condition of occupancy in the park.<sup>128</sup>

If the tenancy was in existence on the effective date of ch. 723, F.S., (June 4, 1984),<sup>129</sup> the prospectus or offering circular offered by the mobile home park owner must contain the same terms and conditions as rental agreements offered to all other mobile home owners residing in the park on the effective date of the Mobile Home Act, excepting only rent variations based upon lot location and size, and must not require any mobile home owner to install any permanent improvements.

In a mobile home park containing 26 or more lots, the park owner must file a prospectus with the division for approval.<sup>130</sup> The division maintains copies of each prospectus and all amendments to each prospectus that it has approved.<sup>131</sup>

The park owner must provide a copy of the prospectus with exhibits to each prospective lessee prior to the execution of the lot rental agreement or at the time of occupancy, whichever occurs first. The lot rental agreement is voidable by the lessee for a period of 15 days after receipt of the prospectus.<sup>132</sup>

By rule of the division, the prospectus distributed to a home owner or prospective home owner is binding for the length of the tenancy, including any assumptions of that tenancy, and may not be changed except in certain specified circumstances.<sup>133</sup>

#### Mobile Home Lot Rental Agreements

Rental agreements in a mobile home park must be consistent with the Mobile Home Act.<sup>134</sup> The provisions of ch. 723, F.S., are deemed to apply to every tenancy in a mobile home park whether or not a tenancy is covered by a valid written rental agreement.<sup>135</sup>

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<sup>125</sup> S. 723.012, F.S.

<sup>126</sup> S. 723.011(3), F.S.

<sup>127</sup> S. 723.012(4), F.S.

<sup>128</sup> S. 723.012(7), F.S.

<sup>129</sup> See Chapter 84-80, Laws of Fla.

<sup>130</sup> S. 723.011(1)(a), F.S.

<sup>131</sup> S. 723.011(1)(d), F.S.

<sup>132</sup> Ss. 723.011(2) and 723.014(1), F.S.

<sup>133</sup> See Rule 61B-31.001, F.A.C.

<sup>134</sup> S. 723.031(1), F.S.

<sup>135</sup> *Id.* at (2).

Park owners are prohibited from offering a rental agreement for a term of less than one year.<sup>136</sup> If there is no written rental agreement, the rental term may not be less than one year from the date of initial occupancy. The initial term may be less than one year in order to permit the park owner to have all rental agreements within the park commence at the same time. Thereafter, all terms must be for a minimum of one year.<sup>137</sup>

### **Effect of the Bill**

The bill amends s. 723.011, F.S., to permit the park owner to disclose in the prospectus permanent improvements the mobile home owner must install to the mobile home.

The bill amends s. 723.012, F.S., to provide that if a park owner intends to include additional property and mobile home lots and to increase the number of lots that will use the shared facilities of the park, the park owner must amend the prospectus to disclose those additions. If the number of mobile home lots in the park increase by more than 15 percent of the total number of lots in the original prospectus, the park owner will reasonably offset the impact of the additional lots by increasing the shared facilities. The amendment to the prospectus must include a reasonable timeframe for providing the required additional shared facilities. The costs and expenses necessary to increase the shared facilities will not be passed on or pass through to the existing mobile home owners.

### **Mobile Home Owner General Obligations**

#### **Present Situation**

Section 723.023, F.S., sets forth the mobile home owner's general obligations. A mobile home owner must at all times:

- Comply with building, housing, and health codes, including compliance with all building permits and construction requirements for construction on the mobile home and lot. The homeowner is responsible for all fines imposed by the local government for noncompliance with any local codes.
- Keep the mobile home lot, which he or she occupies clean, neat, and sanitary, and maintained in compliance with all local codes.
- Comply with properly promulgated park rules and regulations and require other persons on the premises with his or her consent to comply with such rules and to conduct themselves, and other persons on the premises with his or her consent, in a manner that does not unreasonably disturb other residents of the park or constitute a breach of the peace.

#### **Effect of the Bill**

The bill requires mobile home owners to:

- Receive written approval from the mobile home park owner before making any exterior modification or addition to the home.
- When vacating the premises, remove any debris and other property of any kind that is left on the mobile home lot.

### **Mobile Home Park Rent Increases**

#### **Present Situation**

A purchaser of a mobile home has the right to assume the remainder of the term of any rental agreement in effect between the mobile home park owner and seller.<sup>138</sup> The purchaser is also entitled

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<sup>136</sup> S.723.031(4), F.S.

<sup>137</sup> *Id.*

<sup>138</sup> S. 723.059(3), F.S.



to rely on the terms and conditions of the prospectus or offering circular as delivered to the initial recipient.<sup>139</sup>

The mobile home park owner may increase the rental amount upon the expiration of the assumed rental agreement “in an amount deemed appropriate by the mobile home park owner.”<sup>140</sup> The park owner must give affected mobile home owners and the board of directors of the homeowners’ association, if one has been formed, at least a 90-day notice of a lot rental increase.<sup>141</sup>

The amount of the lot rental increase must be disclosed to the purchaser of a mobile home and agreed to in writing by the purchaser.<sup>142</sup> Lot rental increases may not be arbitrary or discriminatory between similarly situated tenants in the park, and the lot rental may not increase during the term of the rental agreement.<sup>143</sup> However, the mobile home park owner may pass on, at any time during the term of the rental agreement, ad valorem property taxes and utility charges, or increases of either, if the passing on of these costs was disclosed prior to the tenancy.<sup>144</sup>

A park owner is deemed to have disclosed the passing on of ad valorem property taxes and non-ad valorem assessments if ad valorem property taxes or non-ad valorem assessments were disclosed as a factor for increasing the lot rental amount in the prospectus or rental agreement.<sup>145</sup>

A park owner must give written notice to each affected mobile home owner and the board of directors of the homeowners’ association, if one has been formed, at least 90 days before any increase in lot rental amount or reduction in services or utilities provided by the park owner or change in rules and regulations.<sup>146</sup> The notice must identify all other affected homeowners, which may be by lot number, name, group, or phase. If the affected homeowners are not identified by name, the park owner shall make the names and addresses available upon request.<sup>147</sup>

A committee of no more than five people, designated by a majority of the owners or by the board of directors of the homeowners’ association (if formed), and the park owner must meet no later than 60 days before the effective date of a rent increase to discuss the reasons for the increase.<sup>148</sup> At the meeting, the park owner or subdivision developer must in good faith disclose and explain all material factors resulting in the decision to increase the lot rental amount, reduce services or utilities, or change rules and regulations, including how those factors justify the specific change proposed.<sup>149</sup>

If the meeting does not resolve the issue, then additional meetings may be requested. If subsequent meetings are unsuccessful, within 30 days of the last scheduled meeting, the mobile home owners may petition the division to initiate mediation.<sup>150</sup> If the mediation does not successfully resolve the dispute, then the parties may file an action in circuit court to challenge the rental increase as unreasonable.<sup>151</sup>

## **Effect of the Bill**

The bill amends s. 723.031, F.S., to require ad valorem property taxes or non-ad valorem assessments be disclosed in the prospectus or rental agreement as a separate charge or a factor in order for a park

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<sup>139</sup> *Id.*

<sup>140</sup> S. 723.059(4), F.S.

<sup>141</sup> S. 723.037(1), F.S.

<sup>142</sup> S. 723.031(5), F.S.

<sup>143</sup> *Id.*

<sup>144</sup> S. 723.031(5)(c), F.S.

<sup>145</sup> *Id.*

<sup>146</sup> S. 723.037(1), F.S.

<sup>147</sup> *Id.*

<sup>148</sup> S. 723.037(4)(a), F.S.

<sup>149</sup> S. 723.037(4)(b), F.S.

<sup>150</sup> S. 723.037(5)(a), F.S.

<sup>151</sup> S. 723.0381, F.S.

owner to be deemed to have disclosed the passing on of ad valorem property taxes and non-ad valorem assessments.

The bill prohibits a park owner from charging or collecting from the mobile home owners any sum of ad valorem taxes or non-ad valorem taxes in an amount in excess of the sums remitted by the park owner to the tax collector.

The bill amends s. 723.037, F.S., to permit the park owner to give notice of all rent increases for multiple anniversary dates in the same 90-day notice. The bill provides that the requirement for the park owner to make available, upon request, the identifying information for homeowners affected by a rent increase does not authorize the park owner to release of the names, addresses, or other private information about the homeowners to the association or any other person for any other purpose.

The bill provides that the committee must address all lot rental amount increases that are specified in the notice of lot rental amount increase, regardless of the effective date of the increase.

### **Replacing Mobile Homes in Mobile Home Parks**

#### **Present Situation**

Except as expressly preempted by the requirements of DHSMV, a mobile home owner or the park owner is authorized to “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.”<sup>152</sup>

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<sup>152</sup> S. 723.041(4), F.S.

## **Effect of the Bill**

The bill provides 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, and built before the park was damaged or destroyed.

The bill provides that the regulation of the uniform fire safety standards established under s. 633.206, F.S., are not limited by this section of the Mobile Home Act. However, the section supersedes any other density, separation, setback, or lot size regulation adopted after initial permitting and construction of the mobile home park.

## **Park Owner Disclosures Prior to Residence**

### **Present Situation**

A mobile home park owner or developer may not require a person, as a precondition to occupancy in the mobile home park, to provide any improvement unless the requirement is disclosed pursuant to s. 723.011, F.S, which requires the park owner to deliver a prospectus to the prospective homeowner before the rental of a mobile home lot.<sup>153</sup>

In a mobile home park containing 26 or more lots, the park owner must file a prospectus with the division.<sup>154</sup> The prospectus must include a “description of all improvements, whether temporary or permanent, which are required to be installed by the mobile home owner as a condition of his or her occupancy in the park.”<sup>155</sup>

### **Effect of the Bill**

The bill provides that a mobile home park owner or developer may not require a person, as a precondition to occupancy in the mobile home park, to provide any improvement unless the requirement is disclosed in the prospectus as required under s. 723.012(7), F.S.

## **Purchasers of a Mobile Home within Mobile Home Park**

### **Present Situation**

The purchaser of a mobile home has the right to assume the remainder of the term of any rental agreement in effect between the mobile home park owner and the seller. The purchaser is entitled to rely on the terms and conditions of the prospectus or offering circular as delivered to the initial recipient.<sup>156</sup>

Upon the expiration of the assumed rental agreement, the mobile home park owner may increase the rental amount if the increase is disclosed to the purchaser prior to his or her occupancy and is imposed in a manner consistent with the initial offering circular or prospectus and ch. 723, F.S.<sup>157</sup>

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<sup>153</sup> S. 723.011(2), F.S.

<sup>154</sup> S. 723.011(1), F.S.

<sup>155</sup> S. 723.012(7), F.S.

<sup>156</sup> S. 723.059(3), F.S.

<sup>157</sup> S. 723.059(4), F.S.

## **Effect of the Bill**

The bill provides that while that the purchaser of a mobile home on a rented lot may assume the seller's prospectus, nothing prohibits the park owner from offering the purchaser any approved prospectus.

The bill requires a mobile home park owner to disclose the lot rental amount to be charged for a new tenancy prior to the applicant paying a screening fee and applying for approval of the tenancy.

## **Termination of a Tenancy**

### **Present Situation**

Section 723.061, F.S., provides the following grounds for termination of a rental agreement:

- 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.

Notice of an eviction must be posted on the premises and sent to the mobile home owner and tenant or occupant by certified or registered mail, return receipt requested.<sup>158</sup>

## **Effect of the Bill**

The bill requires a park owner to send the change in use eviction notice to the division within 20 days. The division must then provide the executive director of the Florida Mobile Home Relocation Corporation with a copy of the notice.

The bill provides that 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.

## **Homeowners' Association Incorporation**

### **Present Situation**

In order to exercise the rights of a homeowners' association (association), mobile home owners must form an association that must be either a for profit or not for profit corporation and of which not less than two-thirds of all the mobile home owners within the park must have consented in writing to become members or shareholders. The term "member" or "shareholder" means a mobile home owner who consents to be bound by the articles of incorporation, bylaws, and polices of the incorporated homeowners' association.<sup>159</sup>

Upon receiving its certificate of incorporation the association must notify the park owner in writing of its creation and must advise the park owner of the names and addresses of the association officers. This notice must be made by personal delivery upon the park owner's representative as designated in the prospectus or by certified mail, return receipt requested.<sup>160</sup>

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<sup>158</sup> S. 723.061(4), F.S.

<sup>159</sup> S. 723.075(1), F.S.

<sup>160</sup> S. 723.076(1), F.S.

## Effect of the Bill

The bill amends s. 723.076, F.S., to specify that the association must notify the park owner in writing by certified mail, return receipt requested, of names and addresses of newly elected or appointed officers or board members to the association.

## Homeowners' Association Bylaws

### Present Situation

#### Voting Requirements and Proxies

Unless otherwise provided in the bylaws, 30 percent of the total membership is required to constitute a quorum for a meeting of the association.<sup>161</sup> A member may not vote by general proxy, but may vote by limited proxies substantially conforming to a limited proxy form adopted by the division. However, members may cast votes for association board members by limited or general proxy.<sup>162</sup> If a mobile home or subdivision lot is jointly owned, the owners of the mobile home or subdivision lot must be counted as one for the purpose of determining the number of votes required for a majority. Only one vote per mobile home or subdivision lot will be counted. Any number greater than 50 percent of the total number of votes constitutes a majority.<sup>163</sup>

#### Board of directors' and committee meetings

Meetings of the board of directors and meetings of its committees at which a quorum is present must be open to all members. This requirement does not apply to meetings held for the purpose of discussing personnel matters or meetings with the association's attorney where the contents of the discussion would be governed by the attorney-client privilege.<sup>164</sup>

#### Member Meetings

The association must conduct at least one member meeting annually during which members of the board of the directors are elected. The association's bylaws may not restrict the nomination from the floor of any member desiring to be a candidate for board membership. All nominations from the floor must be made at a meeting of the members held at least 30 days before the annual meeting. Unless waived in writing, the notice of the annual meeting must be mailed, hand delivered, or electronically transmitted to each member to at least 14 days before the meeting. An officer of the association must provide an affidavit affirming that the notices were mailed or hand delivered to each member at the address last furnished to the corporation.<sup>165</sup>

#### Minutes of Meetings

The minutes of all meetings of members of the association, the board of directors, and a committee must be maintained in writing and approved by the members, board, or committee, as applicable. A vote or abstention from voting on each matter voted upon for each director present at a board meeting must be recorded in the minutes. The minutes of all meetings of members and of the board of directors must be maintained, available for inspection, and retained for at least seven years.<sup>166</sup>

## Effect of the Bill

#### Voting Requirements and Proxies

The bill provides that a proxy may not be used in the election of board members in general elections or elections to fill vacancies caused by recall, resignation, or otherwise. Board members must be elected by written ballot or by voting in person.

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<sup>161</sup> S. 723.078(2)(b)1., F.S.

<sup>162</sup> S. 723.078(2)(b)2., F.S.

<sup>163</sup> S. 723.078(2)(b)2, F.S.

<sup>164</sup> S. 723.078(2)(c), F.S.

<sup>165</sup> S. 723.078(2)(d), F.S.

<sup>166</sup> S. 723.078(2)(e), F.S.

Under the bill, elections must be decided by a plurality of the ballots cast. There is no quorum requirement for an election but at least 20 percent of the eligible voters must cast a ballot for an election to be valid. A member is prohibited from allowing any other person to cast his or her ballot; improperly cast ballots are invalid. An election is required only if there are more candidates nominated than vacancies that exist on the board.

The bill provides that each member or other eligible person wishing to be a candidate for the board of directors must appear on the ballot in alphabetical order by surname. Ballots may not indicate if a candidate is an incumbent on the board. Ballots must be uniform in appearance and may not provide a space for the signature of, or any other means of identifying a vote. If the ballot contains more votes than vacancies or fewer votes than vacancies, the ballot is invalid unless otherwise stated in the bylaws. Write-in candidates and more than one vote per candidate per ballot are not allowed.

The bill requires election oversight by an impartial committee responsible for complying with all ballot requirements. The bill defines "impartial committee" to mean a committee whose members do not include any of the following people or their spouses:

- Current board members.
- Current association officers.
- Candidates for the association or board.

The bill requires the association bylaws provide a method for determining the winner of an election in which there is more than one candidate for the same position receiving the same number of votes.

The bill directs the division to adopt procedural rules to govern elections, including, but not limited to, rules for providing notice by electronic transmission and rules for maintaining secrecy of ballots.

#### Board of directors' and committee meetings

The bill provides that meetings between the park owner and the board of directors or any of the board's committees are not subject to the requirement that meetings be open to the association members.

The bill clarifies that notices of all board or committee meetings open to association members must be posted in a conspicuous place upon the park property at least 48 hours in advance, except in an emergency.

#### Member Meetings

The bill changes the date for the meeting at which to nominate candidates to the board of directors to 27, rather than 30, days before the annual meeting. Unless otherwise stated in the bylaws, notices may be delivered electronically.

#### Minutes of Meetings

Under the bill, the minutes of board or committee meetings that are closed to members are privileged, confidential, and not available for inspection or photocopying.

The bill provides that meetings open for members of the board of directors must be maintained in writing. All minutes of open meetings must be retained within this state for a period of at least five years, rather than seven years in current law.

### **Powers and Duties of Homeowners' Associations**

#### **Present Situation**

The powers of the association include, but are not limited to, the maintenance, management, and operation of the park property.<sup>167</sup>The association must maintain the following items, when applicable, which constitute the official records of the association:<sup>168</sup>

- A copy of the articles of incorporation and each amendment.
- A copy of the bylaws and each amendment.
- A copy of the written rules or policies and each amendment.
- Approved minutes for all meetings of the members, board of directors, and committees of the board. Records must be retained within this state for at least 7 years.
- A current roster of all members and their mailing address and lot identifications.
- All insurance policies or copies, which must be retained for at least 7 years.
- A copy of all contracts or agreements to which the association is a party. Copies must be retained for at least 7 years.
- The financial and accounting records, which must be maintained for at least 7 years.
- All other written records that are related to the operation of the association.

The official records must be maintained within the state for at least 7 years and must be made available to a member for inspection or photocopying within 10 business days after receipt by the board or its designee of a written request submitted by certified mail, return receipt requested.<sup>169</sup>

Failure to provide access to the records creates a rebuttable presumption that the association willfully failed to comply with this section. A member who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. Minimum damages are \$10 per day up to 10 days and calculation begins on the 11<sup>th</sup> business day after receipt of the written request by certified mail, return receipt requested.

### **Effect of the Bill**

The bill includes the approved minutes of meetings open for members, open for members of the board, and committees as part of the official association records and changes the length of retention from seven to five years. The bill specifies that insurance policies and contracts or agreements must be retained for at least five years after the expiration date of the policy or contract. The bill provides that financial and accounting records of the association must be maintained within this state for at least five years, and also specifies that all other written records must be retained within this state for at least five years or at least five years after the expiration date.

The bill requires that the association records be available for inspection by a member within 20 business days. Under the bill, an association member denied access to association records may recover only \$10 per calendar day, not to exceed \$100, and the calculation for the damages begins on the 21st business day after the association receives the written request for records.

The bill provides that a dispute between a member and an association regarding inspecting or photocopying official records must be submitted to mandatory binding arbitration with the division, and the arbitration must be conducted pursuant to s. 723.1255, F.S., and procedural rules adopted by the division.

### **Alternative Resolution of Recall, Election, and Inspection and Photocopying of Official Records Disputes**

#### **Present Situation**

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<sup>167</sup> S. 723.079(1), F.S.

<sup>168</sup> S. 723.079(4)(a)-(i), F.S.

<sup>169</sup> S. 723.079(5), F.S.

As required by statute, the division adopted rules of procedure governing binding arbitration for recall proceedings.<sup>170</sup>

### **Effect of the Bill**

The bill expands s. 723.1255, F.S., to include disputes between a mobile home owner and a homeowners' association regarding the election and recall of officers or directors or the inspection and photocopying of official records. The dispute must be submitted to the division for mandatory binding arbitration conducted under the statute and the procedural rules adopted by the division.

Each party is responsible for paying its own attorney fees, expert and investigator fees, and associated costs. The cost of the arbitrator must be divided equally between the parties regardless of the outcome.

The bill clarifies that the division must adopt rules of procedure to govern mandatory binding arbitration proceedings.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

See Fiscal Comments.

2. Expenditures:

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

See Fiscal Comments.

2. Expenditures:

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

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 the bill. According to Florida Housing, based on current activities, webinars cost \$2,000 each to conduct and in person meetings cost \$5,250 each. Based on the assumption that the state is divided into six regions, with two meetings each per year, the cost of the regional workshops would be between \$24,000 and \$63,000 depending on whether the method of delivery is in person or by teleconference.<sup>171</sup>

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<sup>170</sup> Ch. 61B-50, F.A.C.

<sup>171</sup> Florida Housing, 2020 Analysis for HB 1339. On file with Local, Federal & Veterans Affairs Subcommittee.



