

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/SB 102

INTRODUCER: Appropriations Committee, and Senator Calatayud and others

SUBJECT: Housing

DATE: February 24, 2023      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	<b>Favorable</b>
2.	<u>Nortelus</u>	<u>Sadberry</u>	<u>AP</u>	<b>Fav/CS</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 102 makes various changes and additions to affordable housing related programs and policies at both the state and local level.

Much of the bill involves the Florida Housing Finance Corporation (FHFC), a public-private entity that administers the two largest statewide affordable housing programs: the State Apartment Incentive Loan (SAIL) program and the State Housing Initiatives Partnership (SHIP) program. With regards to the FHFC, the bill:

- Provides up to \$150 million annually to the SAIL program for certain specified uses such as infill and projects near military installations. These funds are to be redirected from the General Revenue service charge, and this provision sunsets 2033.
- Provides up to a \$5,000 refund for sales tax paid on building materials used to construct an affordable housing unit funded through the FHFC.
- Creates a new tax donation program to allow corporate taxpayers to direct certain tax payments to the FHFC, up to \$100 million annually, to fund the SAIL program.
- Codifies the Florida Hometown Heroes down payment assistance program, retaining the structure as it exists while increasing the monetary limit per loan and the scope of eligibility.
- Adds two members to the FHFC Board of Directors, one appointed by the leader of each chamber of the Legislature.
- Broadens the ability for the FHFC to invest in affordable housing developments for those in or aging out of foster care.
- Adds a requirement to its annual legislative budget request.
- Makes a technical amendment to the qualified contracts process.

With regards to other state-level resources, the bill:

- Revises the State Housing Strategy to align with current best practices and goals.
- Requires nonconservation land managers to analyze whether such lands would be more appropriately transferred to a local government for affordable housing related purposes.
- Clarifies current law to ensure all local government requests for surplus lands are expedited.
- Expands Job Growth Grant Fund eligibility to specifically authorize public infrastructure projects that support affordable housing.
- Increases the amount of tax credits available through the Community Contribution Tax Credit Program for affordable housing from \$14.5 million to \$25 million annually.

With regards to local governments, the bill:

- Preempts local governments' requirements regarding zoning, density, and height to allow for streamlined development of affordable housing in commercial and mixed-use zoned areas under certain circumstances. Developments that meet the requirements may not require a zoning change or comprehensive plan amendment.
- Removes a local government's ability to approve affordable housing on residential parcels by bypassing state and local laws that may otherwise preclude such development, while retaining such right for commercial and industrial parcels.
- Removes provision in current law allowing local governments to impose rent control under certain circumstances, preempting rent control ordinances entirely.
- Requires counties and cities to update and electronically publish the inventory of publicly owned properties, for counties including property owned by a dependent special district, which may be appropriate for affordable housing development.
- Authorizes the FHFC, through contract with the Florida Housing Coalition, to provide technical assistance to local governments to facilitate the use or lease of county or municipal property for affordable housing purposes.
- Requires local governments to maintain a public written policy outlining procedures for expediting building permits and development orders for affordable housing projects.
- Provides that the Keys Workforce Housing Initiative is an exception to evacuation time requirements and that comprehensive plan and land use amendments approved under that initiative are valid.

The bill also introduces three ad valorem property tax exemptions:

- An ad valorem tax exemption for land owned by a nonprofit entity that is leased for a minimum of 99 years for the purpose of providing affordable housing.
- An ad valorem tax exemption that applies to rent-restricted units within newly constructed or substantially rehabilitated developments setting aside at least 70 units for affordable housing for households earning 120 percent of area median income or less.
- Authorizes counties and municipalities to offer, through ordinance, an ad valorem tax exemption to property owners who dedicate units for affordable housing for households earning 60 percent of area median income or less.

The bill contains the following appropriations to the FHFC:

- \$100 million in non-recurring funds from the General Revenue Fund to implement the Florida Hometown Heroes Program;

- \$252 million in non-recurring funds from the Local Government Housing Trust Fund for the SHIP program;
- \$150 million in recurring funds from the State Housing Trust Fund for SAIL projects funded by the General Revenue service charge redirect in the bill.
- \$109 million in non-recurring funds from the State Housing Trust Fund for the SAIL program; and
- \$100 million in non-recurring funds from the General Revenue Fund to implement a competitive loan program to alleviate inflation-related cost increases for FHFC-approved multifamily projects that have not yet commenced construction.

See Section V., Fiscal Impact Statement, for Revenue Estimating Conference analysis on individual components of the bill.

Except as otherwise provided, the bill takes effect July 1, 2023.

## II. Present Situation:

The present situation for each issue is described below in Section III, Effect of Proposed Changes.

## III. Effect of Proposed Changes:

*Present Situation:*

### Affordable Housing

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

Affordable housing is defined in terms of household income. Resident eligibility for Florida's state and federally funded housing programs is typically governed by area median income (AMI) levels. These levels are published annually by the U.S. Department of Housing and Urban Development (HUD) for every county and metropolitan area. The following are standard household income level definitions and their relationship to the 2022 Florida state AMI of \$78,300 for a family of four (as family size increases or decreases, the income range also increases or decreases):<sup>1</sup>

- Extremely low income – earning up to 30% AMI (at or below \$ 23,500);<sup>2</sup>
- Very low income – earning from 30.01 to 50% AMI (\$23,501 to \$39,150);<sup>3</sup>

<sup>1</sup> U.S. Department of Housing and Urban Development, *Income Limits, Access Individual Income Limits Areas – Click Here for FY 2022 IL Documentation*, available at <https://www.huduser.gov/portal/datasets/il.html#2022> (last visited January 25, 2023).

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

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

- Low income – earning from 50.01 to 80% AMI (\$39,151 to \$62,650);<sup>4</sup> and
- Moderate income – earning from 80.01 to 120% of AMI (\$62,651 to \$94,000).<sup>5</sup>

To illustrate, below are examples of income thresholds from various counties in Florida:

AMI % Single Income	30%	60%	80%	120%	150%
Miami-Dade	20,490	40,980	54,640	81,960	102,450
Collier	19,830	39,660	52,880	79,320	99,150
Leon	17,070	34,140	45,520	68,280	85,350
Bradford <sup>6</sup>	12,750	25,500	34,000	51,000	63,750

AMI % Family of 4	30%	60%	80%	120%	150%
Miami-Dade	29,250	58,500	78,000	117,000	146,250
Collier	28,290	56,580	75,440	113,160	141,450
Leon	24,360	48,720	64,960	97,440	121,800
Bradford <sup>7</sup>	18,210	36,420	48,560	72,840	91,050

Housing costs reflect what people are willing to pay to live in an area, which may make it difficult for the workforce, elders, and people with disabilities to find affordable homes and apartments. The government helps make housing affordable through decreased monthly rent or mortgage payments so that income eligible families are able to pay less for housing than it would otherwise cost at “market rate.” Lower monthly payments or down payment assistance is a result of affordable housing financing.

**Florida Housing Finance Corporation**

The 1997 Legislature created the Florida Housing Finance Corporation (FHFC) as a public-private entity to assist in providing a range of affordable housing opportunities for Floridians.<sup>8</sup> The FHFC is a corporation held by the state and housed within the Department of Economic Opportunity (DEO). The FHFC is a separate budget entity and its operations, including those relating to personnel, purchasing, transactions involving real or personal property, and budgetary matters, are not subject to control, supervision, or direction by the DEO.<sup>9</sup>

The goal of the FHFC is to increase the supply of safe, affordable housing for individuals and families with very low to moderate incomes by stimulating investment of private capital and encouraging public and private sector housing partnerships. As a financial institution, the FHFC administers federal and state resources to finance the development and preservation of affordable rental housing and assist homebuyers with financing and down payment assistance.

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

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

<sup>6</sup> This threshold applies to 18 counties: Bradford, DeSoto, Dixie, Glades, Hamilton, Hardee, Hendry, Holmes, Jackson, Levy, Liberty, Madison, Okeechobee, Putnam, Suwanee, Taylor, Union, and Washington.

<sup>7</sup> *Id.*

<sup>8</sup> Chapter 97-167, Laws of Fla. From 1980 through 1997, the former Florida Housing Finance Agency, placed within the former Department of Community Affairs, performed similar duties.

<sup>9</sup> Section 420.504(1), F.S.

## **Funding for Affordable Housing**

The FHFC draws and administers funds from federal programs through federal tax credits and the HUD,<sup>10</sup> from the state through the State Housing Trust Fund and Local Government Housing Trust Fund,<sup>11</sup> both funded by documentary stamp taxes, as well as ad hoc individual legislative appropriations, and through program income, which consists primarily of funds from successful loan repayment that is recycled into the program it came from.

### ***Documentary Stamp Tax***

The documentary stamp tax imposes an excise tax on deeds or other documents that convey an interest in Florida real property. The tax comprises two taxes imposed on different bases at different tax rates. The first tax rate is 70 cents on each \$100 of consideration for deeds, instruments, or writings whereby lands, tenements, or other real property or interests that are granted, assigned, transferred, conveyed or vested in a purchaser.<sup>12</sup> The second tax rate is 35 cents per each \$100 of consideration for certificates of indebtedness, promissory notes, wage assignments, and retail charge account agreements.<sup>13</sup> Revenue collected from the documentary stamp tax is divided between the General Revenue Fund and various trust funds<sup>14</sup> according to the statutory formula in ch. 201, F.S.

### ***Housing Trust Funds***

The State Housing Trust Fund, administered by the FHFC,<sup>15</sup> is “to be used for new construction and substantial rehabilitation of housing, to improve the state’s ability to serve first-time homebuyers, and to increase the affordability and availability of the housing stock in the State of Florida.”<sup>16</sup> The 1992 Sadowski Act increased documentary stamp tax rates and provided for a certain proportion of documentary stamp tax revenues to be distributed to the State Housing Trust Fund. A large portion of these funds are utilized in the State Apartment Incentive Loan (SAIL) Program.

The Local Government Housing Trust Fund, administered by the FHFC,<sup>17</sup> is used to fund the State Housing Initiatives Partnership (SHIP) Program, which was created “for the purpose of providing funds to local governments as an incentive for the creation of partnerships to produce and preserve affordable housing.”<sup>18</sup> A certain proportion of documentary stamp tax revenues are distributed to the Local Government Housing Trust Fund.

<sup>10</sup> See ss. 420.507(33) and 159.608, F.S.

<sup>11</sup> Section 201.15, F.S.

<sup>12</sup> Section 201.02(1), F.S.

<sup>13</sup> Sections 201.07 and 201.08, F.S.

<sup>14</sup> The Land Acquisition Trust Fund, the State Transportation Trust Fund, the State Economic Enhancement and Development Trust Fund, the General Inspection Trust Fund, the Water Protection and Sustainability Program Trust Fund, the Resilient Florida Trust Fund, the State Housing Trust Fund, and the Local Government Housing Trust Fund.

<sup>15</sup> Chapter 92-317, ss. 1-35, Laws of Fla; Section 420.0005, F.S.

<sup>16</sup> Chapter 88-376, s. 2, Laws of Fla.; s. 420.003(5), F.S. (1988).

<sup>17</sup> Section 420.9079, F.S.

<sup>18</sup> Chapter 92-317, s. 32, Laws of Fla.; s. 420.9072, F.S. (1992).

## State Apartment Incentive Loan (SAIL) Program

The SAIL Program is administered by the FHFC and provides low-interest loans on a competitive basis to multifamily affordable housing developers.<sup>19</sup> These funds often serve to bridge the gap between the development's primary financing and the total cost of the development. SAIL dollars are available for developers proposing to construct or substantially rehabilitate multifamily rental housing.<sup>20</sup>

At a minimum, developments financed by SAIL must set aside 20 percent of units for households at or below 50 percent of AMI, or if the development also receives Low Income Housing Tax Credits<sup>21</sup> (LIHTC), 40 percent of units for households up to 60 percent of AMI.<sup>22</sup> Loan interest rates are set at zero percent for those developments that maintain 80 percent of their occupancy for farmworkers, commercial fishing workers or homeless people. The interest rates are set at one percent for all other developments. Generally, loans are issued for 15 years and cover approximately 25 to 35 percent of the total development cost.

### *Development Funding Selection Process*

SAIL funding is distributed by the FHFC through a competitive solicitation process.<sup>23</sup> Each year the FHFC issues several requests for application, formal offers of funding that require hopeful developers to give the FHFC detailed information related to the development. These requests for application vary by geography and needs of the community, based on a statewide market study.<sup>24</sup> Applications are then reviewed and scored by the FHFC, based on a number of criteria, and awards are made from the highest scoring applications.<sup>25</sup>

To illustrate, in 2022 one request for application was entitled "SAIL Financing for the Construction of Workforce Housing in Monroe County."<sup>26</sup> This request stated that up to \$5.52 million in SAIL financing would be awarded for a Monroe County based development serving workforce income households (up to 120% AMI), in addition to \$1.8 million of LIHTC financing available for award to developments serving low income households (up to 60% AMI). Applicants filed detailed information, including developer experience, development characteristics, proposed location, set-aside commitments, and existing financing. Applications

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<sup>19</sup> Section 420.5087, F.S.

<sup>20</sup> See Florida Housing Finance Corporation, *State Apartment Incentive Loan*, available at <https://floridahousing.org/programs/developers-multifamily-programs/state-apartment-incentive-loan> (last visited February 3, 2022).

<sup>21</sup> Low Income Housing Tax Credits are a financial instrument administered by the Department of Housing and Urban Development that provide financing for low income housing developments. Credits are allocated to states on a per capita basis and state-level administration is performed by FHFC. Eligible developments are income-limited similarly to SAIL requirements.

<sup>22</sup> Section 420.5087(2), F.S.

<sup>23</sup> Section 420.5087(1), F.S.

<sup>24</sup> *Id.*, see also Fla. Admin. Code R. Ch 67-60.

<sup>25</sup> For the full list of statutory criteria, see s. 420.5087(6)(c), F.S. Additional criteria and scoring mechanics can be set by FHFC.

<sup>26</sup> Florida Housing Finance Corporation, *Request for Applications 2022-208*, March 7, 2022, available at [https://www.floridahousing.org/docs/default-source/programs/competitive/2022/2022-208/3-7-22-final-2022-208-workforce\\_bookmarked08e499c2fb0d6fb69bf3ff00004a6e0f.pdf?sfvrsn=ce9f67b\\_0](https://www.floridahousing.org/docs/default-source/programs/competitive/2022/2022-208/3-7-22-final-2022-208-workforce_bookmarked08e499c2fb0d6fb69bf3ff00004a6e0f.pdf?sfvrsn=ce9f67b_0) (last visited December 29, 2022).

were reviewed and ultimately one was awarded the full amount available. The resulting development following award will have 98 units, with each unit set aside as follows:

- 10 percent of the units will serve households at or below 25% AMI;
- 40 percent of the units will serve households at or below 60% AMI; and
- 50 percent of the units will serve households between 60% and 120% AMI.<sup>27</sup>

These set-asides for affordable housing set two limits on an apartment: the rent is limited to make the apartment affordable to someone at the target income, and potential renters must submit proof of income beneath the target before becoming eligible renters. Set-asides are generally governed by a Land Use Restrictive Agreement (LURA), which is recorded by the county clerk's office and runs with the land. A LURA can also include a time period associated with restriction compliance enforced by the IRS, HUD, or other housing authority.<sup>28</sup> Both the FHFC and local governments utilize LURAs to enforce requirements that developers receiving funding indeed go on to provide affordable housing.

The same competitive solicitation process is used to distribute many different types of funding routed through the FHFC. The FHFC is the state's administrator for all federal affordable housing programs, which include LIHTC, HOME investment partnerships and the National Housing Trust Fund program via the HUD, and Multifamily Mortgage Revenue Bonds. The process is also used for other state programs such as the Elderly Housing Community Loan Program.<sup>29</sup> Certain funding sources can also be paired to ensure a greater number of projects are funded.

### ***External Funding for SAIL Projects***

SAIL funding operates as gap financing, which means it provides the last amount needed to secure a development's future. There are several sources of funding that an affordable housing development will take advantage of:

- FHFC Loans and Grants, which result from state appropriations;
- Traditional financing through bank loans and bond issuance;
- Local government investment;
- Private funds directly raised or put forth by the developer; and
- LIHTC.

Housing credits are a financial instrument, tax credits, issued through the LIHTC program.<sup>30</sup> After being allocated a certain amount of tax credits by the federal government based on population and need, the FHFC allocates the funding to affordable housing developers. There are two types of credits:

<sup>27</sup> See Lofts at Bahama Village, Application Package for RFA 2022-208, Application Number 2022-265CS, available at <https://www.floridahousing.org/programs/developers-multifamily-programs/competitive/submitted-rfas?RFA=2022208> (last visited December 29, 2022).

<sup>28</sup> Commercial Real Estate Finance Company of America, *Multifamily Housing – Land Use Restrictive Agreement (LURA) LIHTC*, available at <https://www.crefcoa.com/land-use-restrictive-agreement.html> (last visited February 4, 2023).

<sup>29</sup> SB 102's focus, as it relates to multifamily development loans, is SAIL funding. For more on the programs referred to in this paragraph, see generally Florida Housing Finance Corporation, *2021 Annual Report*, January 30, 2022, available at [https://issuu.com/fhfc/docs/2021\\_annual\\_report](https://issuu.com/fhfc/docs/2021_annual_report) (last visited December 29, 2022).

<sup>30</sup> Florida Housing Finance Corporation, *Housing Credits*, available at <https://www.floridahousing.org/programs/developers-multifamily-programs/low-income-housing-tax-credits> (last visited January 5, 2023).

- 9 percent credits, which are more valuable and limited. These are competitively bid for and can typically fund two-thirds of a development's total cost; and
- 4 percent credits, which are not limited and considered "non-competitive." These typically fund one third of a development's total cost.

### **General Revenue Service Charge Redirect for SAIL Program**

Section 201.15, F.S., prescribes the distribution of revenues from the excise tax on documents. After payments on certain outstanding bonds and a distribution to the Land Acquisition Trust Fund, eight percent of total collections is deducted as the General Revenue service charge required by s. 215.20(1), F.S. This charge is intended to represent a share of the cost of general government. The remaining revenues from the excise tax on documents are distributed to various trust funds, including the State Housing and Local Government Housing Trust Funds, pursuant to s. 201.15, F.S.

#### *Effect of Proposed Changes:*

The bill provides for \$150 million to be redirected from the General Revenue service charge to the State Housing Trust Fund for use in the SAIL program, with certain priorities and goals attached. These goals include projects focused on infill and maximizing existing infrastructure, the use and lease of public lands, projects near military installations, and projects meeting the needs of certain groups such as the elderly and those aging out of foster care. This funding is annually recurring, and will be repealed on July 1, 2033. A section-level breakdown follows.

**Section 10** amends s. 201.15, F.S., to provide that, after documentary stamp tax revenue distributions to the Land Acquisition Trust Fund and before any other distributions, the lesser of 8 percent of the remainder or \$150 million is paid to the credit of the State Housing Trust Fund to be utilized pursuant to s. 420.50871, F.S., created by section 30. The remainder of the 8 percent shall be paid into the General Revenue Fund, constituting the General Revenue service charge. The section removes other references to the General Revenue service charge.

**Section 11** provides that the amendments made by section 10 expire on July 1, 2033, and the text of that section shall revert to that in existence before the bill's passage but for any amendments by other legislation which are not dependent on the portions of the text which expire.

**Section 14** creates s. 215.212, F.S., to exempt documentary stamp taxes from the General Revenue service charge, in accordance with the amendments made by Section 10 which provide the same 8 percent charge in another form. This section is also repealed July 1, 2033.

**Section 15** amends s. 215.22, F.S., to make a technical conforming change. **Section 16** likewise provides that the amendments made by section 15 expire on July 1, 2033, and the text of that section shall revert to that in existence before the bill's passage but for any amendments by other legislation which are not dependent on the portions of the text which expire.

**Section 32** creates s. 420.50871, F.S., which provides the allocation of revenues derived by the amendments made by section 10. The \$150,000,000 allocated to the State Housing Trust Fund



by section 10 are to be used by the FHFC under the SAIL program, with specific requirements as follows:

Seventy percent of the funds must be used to issue competitive requests for application to finance projects that:

- Both redevelop an existing affordable housing development and provide for the construction of a new development within close proximity to the existing development to be rehabilitated. This mechanism involves building a new affordable housing development first, relocating the tenants of the existing development to the new development, and then demolishing the existing development for reconstruction of an affordable housing development with more overall and affordable units.
- Address urban infill, including conversions of vacant, dilapidated, or functionally obsolete buildings or the use of underused commercial property.
- Provide for mixed use of the location, incorporating nonresidential uses, such as retail, office, institutional, or other appropriate commercial or nonresidential uses.
- Provide housing near military installations in this state.

The remaining 30 percent must be used to finance any of the following projects which:

- Propose using or leasing public lands. Projects that propose to use or lease public lands must include a resolution or other agreement with the unit of government owning the land to use the land for affordable housing purposes.
- Address needs of young adults who age out of the foster care system.
- Meet the needs of elderly persons.
- Provide housing to meet the needs in areas of rural opportunity, designated pursuant to s. 288.0656, F.S.

One project need not meet all of the goals listed for each allocation group, but each goal must be targeted for development. The bill instructs the FHFC to coordinate with the appropriate state department or agency for each goal, and to prioritize projects providing mixed-income developments. Funds allocated under this section must remain within the requirements of this section, but the FHFC may allocate outside funds (e.g. from the wider SAIL program) to supplement these funds.

This section is repealed on June 30, 2033.

**Section 33** directs the Division of Law Revision to make technical amendments to bill when published into law.

*Present Situation:*

### **Florida Sales Tax Refund for SAIL Developments**

Florida levies a six percent sales and use tax on the sale or rental of most tangible personal property,<sup>31</sup> admissions,<sup>32</sup> transient rentals,<sup>33</sup> and a limited number of services. Chapter 212, F.S.,

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<sup>31</sup> Section 212.05(1)(a)1.a., F.S.

<sup>32</sup> Section 212.04(1)(b), F.S.

<sup>33</sup> Section 212.03(1)(a), F.S.

contains provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain sales. Sales tax is added to the sales price of the taxable good or service and collected from the purchaser at the time of sale.<sup>34</sup>

Counties are authorized to impose local discretionary sales surtaxes in addition to the state sales tax.<sup>35</sup> A surtax applies to "all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions by [ch. 212, F.S.], and communications services as defined in ch. 202."<sup>36</sup> The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold or delivered. Discretionary sales surtax may be levied in a range of 0.5 to 2.5 percent.<sup>37</sup>

*Effect of Proposed Changes:*

**Section 12** (in part) amends s. 212.08(5)(v), F.S., to provide up to a \$5,000 refund for sales tax paid on building materials used to construct an affordable housing unit funded through the FHFC.

The bill provides that building materials used in eligible residential units are exempt from sales tax under certain circumstances. The exemption takes the form of a post-construction refund to the owner, and may not exceed the lesser of \$5,000 or 97.5 percent of the Florida sales or use tax paid on the cost of building materials per unit. A refund will not be granted unless it exceeds \$500. This refund does not apply to affordable housing developments for which construction began prior to July 1, 2023.

In order to receive the refund, the owner of the applicable residential units must submit a review request to the Department of Revenue (DOR) within six months of the units' completion, including the following:

- The applicant's name and address;
- An address and parcel number of the improved real property;
- A description of the eligible residential units;
- A copy of the units' building permit;
- A sworn statement from the general contractor or owner specifying the building materials, their cost and sales tax; and
- A certification by the building code inspector that the unit is substantially completed.
- A copy of the LURA with the FHFC for the eligible units.

The exemption may also be claimed by a local government, agency, or nonprofit community-based organization if the building materials are paid for from the funds of a grant or loan program similar to SHIP. In this instance, the local government, agency, or organization would submit the same request as above.

The DOR may adopt rules to implement the directives of this section.

<sup>34</sup> Section 212.07(2), F.S.

<sup>35</sup> Section 212.055, F.S.

<sup>36</sup> Section 212.054(2)(a), F.S.

<sup>37</sup> Office of Economic and Demographic Research, *Florida Tax Handbook*, 227-228 (2021), available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2021.pdf> (last visited Dec. 06, 2021).

The DOR will additionally move 10 percent of the value of the refund from the Local Government Half-Cent Sales Tax Clearing Trust Fund to the General Revenue Fund in order to reflect the sales tax refund.

*Present Situation:*

**“Live Local Program” - Tax Credit Program benefiting SAIL Program**

The Florida Tax Credit Scholarship Program (FTC) was created in 2001<sup>38</sup> and allows taxpayers to make private, voluntary contributions to scholarship-funding organizations (SFOs) that can then be awarded as scholarships to eligible low-income students for private school tuition and fees. Taxpayers can receive a tax credit for use against their liability for corporate income tax, insurance premium tax, oil and gas production tax, use tax under a direct pay permit or alcoholic beverage taxes on beer, wine, and spirits.<sup>39</sup> The tax credit is equal to 100 percent of the eligible contributions made.<sup>40</sup> To receive a tax credit the taxpayer must submit an application to the DOR and specify each tax for which the taxpayer requests a credit and the applicable taxable or state fiscal year for the credit.<sup>41</sup> Taxpayers can rescind tax credits, which will become available to another eligible taxpayer in that fiscal year.<sup>42</sup>

Described below are select taxes imposed by Florida on certain businesses and products within the state.

- **Corporate Income Tax:** Florida imposes a 5.5 percent tax on the taxable income of certain corporations and financial institutions doing business in Florida.<sup>43</sup> Corporate income tax is remitted to the DOR and distributed to the General Revenue Fund.
- **Insurance Premium Tax:** Florida imposes a 1.75 percent tax on most Florida insurance premiums.<sup>44</sup> Insurance premium taxes are paid by insurance companies under ch. 624, F.S., and are remitted to the DOR. These revenues are distributed to the General Revenue Fund with additional distributions to the Insurance Regulatory Trust Fund, the Police & Firefighters Premium Tax Trust Fund, and the Emergency Management Preparedness & Assistance Trust Fund.

*Effect of Proposed Changes:*

**Section 34** creates s. 420.50872, F.S., to establish the “Live Local Program,” a tax credit program benefiting the SAIL program.

Under the Live Local Program, businesses that make monetary donations to the FHFC to fund the SAIL program may receive a dollar-for-dollar credit against either corporate income or

<sup>38</sup> Section 1002.395, F.S.

<sup>39</sup> Section 1002.395(1) and (5), F.S.

<sup>40</sup> Sections 220.1875 and 1002.395(5), F.S.

<sup>41</sup> Section 1002.395(5)(b), F.S.

<sup>42</sup> Section 1002.395(5)(e), F.S.

<sup>43</sup> Sections 220.11(2) and 220.63(2), F.S.

<sup>44</sup> Section 624.509, F.S. (Different tax rates apply to wet marine and transportation insurance, self-insurance, and annuity premiums.)

insurance premium taxes. New sections are created in each of the applicable tax chapters to create the credit. The annual tax credit cap for all credits under the program is \$100 million.

The FHFC must expend all of the contributions received under the Live Local Program for the SAIL program. From the amount received, the FHFC may use up to \$25 million to provide loans for the construction of large-scale projects of significant regional impact. These projects must include a substantial civic, educational, or health care component, and may incorporate commercial use.

Such a loan must be made in accordance with the practices and policies of the SAIL program, through a competitive application process, and must not exceed 25 percent of the development's total costs. The FHFC must find that such a loan provides a unique opportunity for investment alongside local government participation that enables the creation of a significant amount of affordable and workforce housing.

#### Application and Approval of Tax Credits by the DOR

Taxpayers that wish to participate in the program by making a donation to the initiative must apply to the DOR beginning October 1, 2023, for an allocation of tax credit. The taxpayer must specify in the application each tax for which the taxpayer requests a credit, the applicable taxable year for a credit under s. 220.1878 (regarding corporate income tax and created by **section 21**) or s. 624.51058, F.S. (regarding insurance premium taxes and created by **section 41**). The DOR is required to approve the tax credits on a first-come, first-served basis.

Any unused credit may be carried forward up to ten taxable years. The bill generally does not allow a taxpayer to convey, transfer, or assign the credit to another entity unless all of the assets of the taxpayer are conveyed, transferred, or assigned in the same transaction. Upon approval of the DOR, transfers may be made between members of an affiliated group of corporations if the credit transferred will be taken against the same type of tax. Credits earned under this program are to be accounted for in calculating the underpayment of estimated corporate income taxes, as well as associated penalties and interest.

A taxpayer may apply to the DOR to rescind all or part of an approved tax credit. The amount rescinded becomes available for that state fiscal year to another eligible taxpayer as approved by the DOR if the taxpayer receives notice that the rescindment has been accepted.

The bill allows the DOR and the FHFC to share information and develop a cooperative agreement to assist in the administration of the program, and the DOR is further authorized to adopt rules. Additionally, the bill requires the DOR, by August 15, 2023, and each year thereafter, to determine the 500 taxpayers with the greatest total corporate income or franchise tax liability and notify those taxpayers of the existence of the Live Local Program and the process to participate.

**Section 13** amends s. 213.053, F.S., to direct the DOR to make available to the FHFC information for the purpose of administering the Live Local program.

*Present Situation:***SAIL Developments for Those in Foster Care or Those Aging out of Foster Care**

Current law provides that the FHFC may prioritize a portion of SAIL funding set aside 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.<sup>45</sup> This 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.

*Effect of Proposed Changes:*

**Section 31** amends s. 420.5087(10), F.S., to remove the requirement that the prioritized developments for persons in foster care or aging out of foster care be “on a campus” that provides housing for such persons, in order to add flexibility to the types of developments the FHFC can fund.

*Present Situation:***State Housing Initiatives Partnership (SHIP) Program**

The SHIP Program was created in 1992<sup>46</sup> to provide funds to local governments as an incentive to create partnerships that produce and preserve affordable homeownership and multifamily housing. The SHIP program provides funds to all 67 counties and 52 Community Development Block Grant<sup>47</sup> entitlement cities on a population-based formula to finance and preserve affordable housing based on locally adopted housing plans.<sup>48</sup> The program was designed to serve very-low, low-, and moderate-income families and is administered by the FHFC. SHIP funds may be used to pay for emergency repairs, rehabilitation, down payment and closing cost assistance, impact fees, construction and gap financing, mortgage buydowns, acquisition of property for affordable housing, matching dollars for federal housing grants and programs, and homeownership counseling.<sup>49</sup>

Funds are expended per each local government’s adopted Local Housing Assistance Plan (LHAP), which details the housing strategies it will use.<sup>50</sup> Local governments submit their LHAPs to the FHFC for review to ensure that they meet the broad statutory guidelines and the requirements of the program rules. The FHFC must approve an LHAP before a local government may receive the SHIP funding.

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<sup>45</sup> Section 420.5087(10), F.S.

<sup>46</sup> Chapter 92-317, Laws of Fla.

<sup>47</sup> The CDBG program is a federal program created in 1974 that provides funding for housing and community development activities.

<sup>48</sup> See ss. 420.907-420.9089, F.S.

<sup>49</sup> Section 420.072(7), F.S.

<sup>50</sup> Section 420.9075, F.S. Section 420.9075(3), F.S., outlines a list of strategies LHAPs are encouraged to employ, such as helping those affected by mobile home park closures, encouraging innovative housing design to reduce long-term housing costs, preserving assisted housing, and reducing homelessness.

Certain statutory requirements restrict a local government's use of funds made available under the SHIP program (excluding amounts set aside for administrative costs):

- At least 75 percent of SHIP funds must be reserved for construction, rehabilitation, or emergency repair of affordable, eligible housing;<sup>51</sup> and
- Up to 25 percent of SHIP funds may be reserved for allowed rental services.<sup>52</sup>

Within those distributions by local governments, additional requirements must be met:

- At least 65 percent of SHIP funds must be reserved for home ownership for eligible persons;<sup>53</sup>
- At least 20 percent of SHIP funds must serve persons with special needs;<sup>54</sup>
- Up to 20 percent of SHIP funds may be used for manufactured housing;<sup>55</sup> and
- At least 30 percent of SHIP funds must be used for awards to very-low-income persons or eligible sponsors serving very-low-income persons, and another 30 percent must be used for awards for low-income-persons or eligible sponsors serving low-income persons.<sup>56</sup>

### **Florida Housing Finance Corporation Homeownership Programs**

The FHFC's primary function is administering a variety of programs to assist in the development and rehabilitation of affordable housing stock, provide low interest loans for first-time homebuyers, provide down payment assistance and reduce closing costs, and assist in the housing side of disaster recovery. The following programs focus primarily on aiding first-time homebuyers into stable homeownership by reducing mortgage payments and onerous one-time costs associated with purchasing a home.

#### ***Homebuyer Loan Programs***

The FHFC's homebuyer loan programs offer 30-year fixed-rate first mortgage loans originated by a network of participating lenders throughout Florida. The programs are offered to eligible first time homebuyers<sup>57</sup> who meet income, purchase price and other program criteria; can qualify for a loan; and successfully complete a homebuyer education course.<sup>58</sup> Borrowers who qualify

<sup>51</sup> Section 420.9075(5)(c), F.S.

<sup>52</sup> Section 420.9075(5)(b), F.S. However, a local government may not expend money distributed to it to provide ongoing rent subsidies, except for: security and utility deposit assistance; eviction prevention not to exceed six months' rent; or a rent subsidy program for very-low-income households with at least one adult who is a person with special needs or is homeless, not to exceed 12 months' rental assistance.

<sup>53</sup> Section 420.9075(5)(a), F.S. "Eligible person" or "eligible household" means one or more natural persons or a family determined by the county or eligible municipality to be of very low income, low income, or moderate income based upon the annual gross income of the household.

<sup>54</sup> Section 420.9075(5)(d), F.S.

<sup>55</sup> Section 420.9075(5)(e), F.S.

<sup>56</sup> Section 420.9075(5)(g)2., F.S.

<sup>57</sup> The IRS definition of "first-time homebuyer," generally accepted by Florida agencies and corporations, is a person who has not owned and occupied their primary residence for the past three years. *See Homebuyer Overview*, FHFC, available at <https://www.floridahousing.org/programs/homebuyer-overview-page> (last visited December 15, 2021).

<sup>58</sup> FHFC funds homebuyer loans through various transaction types, including (a) the specified pool market, (2) tax-exempt bonds, and (3) forward delivery/To Be Announced (TBA) market.

for a first mortgage program may access one of the FHFC's down payment assistance (DPA) programs.<sup>59</sup>

### ***Down Payment Assistance***

The FHFC administers multiple DPA programs available to first time homebuyers utilizing a FHFC first mortgage loan product. DPA is typically offered as a low- or zero-rate loan, in the form of a second mortgage,<sup>60</sup> to secure funding for down payments, closing costs, mortgage insurance premiums, or principal reduction to the first mortgage.<sup>61</sup> FHFC DPA programs are funded from a mix of sources including documentary stamp tax revenue, special legislative appropriation, and FHFC program income, which is primarily returned loan money. The various programs differ in terms of eligibility, ranging up to 120 percent AMI, requirements, such as also having been approved for a first mortgage through the FHFC, and terms, some including forgivable loans.

### ***Hometown Heroes Program***

In 2022, pursuant to the 2022 General Appropriations Act,<sup>62</sup> the FHFC created the Hometown Heroes Program, a new homeownership assistance program.<sup>63</sup> Under the program, eligible purchasers have access to 0-interest rate loans to reduce the amount of down payment and closing costs from \$10,000 to a maximum of 5 percent or \$25,000, whichever is less. Loans must be repaid when the property is sold, refinanced, rented, or transferred unless otherwise approved by the FHFC.

Such loans are available to those first-time homebuyers seeking first mortgages whose family incomes do not exceed 150 percent of the state or local AMI, whichever is greater, and are employed in certain necessary professions such as law enforcement officers, educators, healthcare professionals, and active military or veterans (combining the previous Salute our Soldiers Program).<sup>64</sup> The requirement to be a first-time homebuyer does not apply to those qualifying as servicemembers or veterans.

The FHFC was appropriated \$100 million in 2022 to establish the Hometown Heroes Program.<sup>65</sup> As of February 17, 2023, the program has provided over \$58 million in assistance in 3,990 loans.

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<sup>59</sup> See Florida Housing Finance Corporation, *2020 Annual Report*, p. 13, available at <https://www.floridahousing.org/data-docs-reports/annual-reports> (last visited November 30, 2021).

<sup>60</sup> A second mortgage is a subordinate mortgage made while the original is still in effect.

<sup>61</sup> Only one FHFC DPA program can be used by a borrower.

<sup>62</sup> HB 5001, specific appropriation 2289 (2022 Reg. Session).

<sup>63</sup> Florida Housing Finance Corporation, *Florida Hometown Heroes Housing Program*, available at <https://www.floridahousing.org/programs/homebuyer-overview-page/hometown-heroes> (last visited January 10, 2023).

<sup>64</sup> See Eligible Occupations for FL Hometown Heroes Loan Program, available at [https://www.floridahousing.org/docs/default-source/programs/homebuyers/hometown-heroes/eligible-occupations.pdf?sfvrsn=238ff57b\\_6](https://www.floridahousing.org/docs/default-source/programs/homebuyers/hometown-heroes/eligible-occupations.pdf?sfvrsn=238ff57b_6) (last visited February 4, 2023).

<sup>65</sup> Supra note 62.

*Effect of Proposed Changes:*

**Section 35** creates s. 420.5096, F.S., to codify the Florida Hometown Heroes Program. The program created by the bill will operate as the current Hometown Heroes program with the following differences:

- Eligibility remains based on income being at or below 150 percent AMI and one's ability to qualify for a first mortgage, however the occupation qualifiers that currently apply to the Hometown Heroes program are omitted. A prospective borrower must be a Florida resident and employed full-time (35 hours or more per week) by a Florida-based employer.
- The maximum amount available per loan is raised from \$25,000 to \$35,000, while the cap of 5 percent of purchase price is maintained.
- The bill specifies that loans made under this program may be used for the purchase of manufactured homes, as defined by s. 320.01(2)(b), that were constructed after August 1, 1994, and are titled as either real or tangible personal property.

*Present Situation:***Additional Provisions Related to the Florida Housing Finance Corporation***Legislative Budget Request*

As SAIL funding can be used in several ways (for example new unit production, rehabilitation, and maintenance of affordable units), and is often utilized to draw down federal funding from tax credits and grant funds, the effects of SAIL funding are variable on a per-dollar basis. The amount of funding needed annually to maximize state and local funding toward the production of new affordable units is calculable by analyzing the various sources and matching state funding with federal funding.

The FHFC prepares and submits an annual legislative budget request to the Secretary of the DEO containing a request for operational expenditures and a separate request for other authorized corporation programs.<sup>66</sup>

*Effect of Proposed Changes:*

**Section 29** amends s. 420.507(30), F.S., to require that the FHFC legislative budget requests include, for informational purposes, the amount of state funds necessary to fully utilize all federal housing funds in the fiscal year to maximize the production of new, affordable multifamily housing units.

**Section 30** provides that this provision expires July 1, 2033, unless otherwise acted upon by the Legislature.

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<sup>66</sup> Section 420.507(30), F.S.



*Present Situation:****Qualified Contracts***

Of the affordable housing financing options provided by the federal government, Low Income Housing Tax Credits (LIHTC)<sup>67</sup> are among the most commonly used. When a property is financed using LIHTC the federal government typically requires the property be utilized for affordable housing for at least 30 years.<sup>68</sup> This time period is divided into the first 15 years, the “initial compliance period,” and the rest, an “extended use period.”

After 14 years the owner of an affordable housing development may request that the FHFC seek a purchaser who will continue to operate the affordable portions of the development as affordable housing, what’s referred to as the “qualified contract process.” Many developments, particularly those who receive the most lucrative LIHTC, waive the right to enter this process, and must remain affordable housing for the duration of the agreed upon time. After a developer requests a qualified contract, if the FHFC is unable to present a buyer during the subsequent 1-year period the extended use period of the property as affordable housing will end, and the property can be utilized for market-rate housing.<sup>69</sup>

This “qualified contract process” relies on the FHFC marketing the property and returning to the owner with a “bona fide contract,” showing that they have found a buyer in order to maintain the affordable housing requirement. The price for the affordable housing portion of the sale is set according to a formula designed to give the owner an inflation adjusted return on its original equity contribution.<sup>70</sup> The bona fide contract, as provided by administrative rule is:

...a contract for sale signed by the purchaser, which states that acceptance of the contract is contingent upon approval by the Corporation, and must provide for an initial earnest money deposit (the initial deposit) from the purchaser in the minimum amount of \$50,000 and obligate the purchaser to make a second earnest money deposit (the second deposit) (the initial and second deposits shall be refundable in the event of the seller’s failure to deliver insurable title or in the event of seller’s default, otherwise the deposits shall be non-refundable) equal to three (3) percent of the qualified contract price.<sup>71</sup>

If the FHFC is able to procure a purchaser and present the owner with such a bona fide contract within the one year period, regardless of whether the owner accepts, rejects, or fails to act upon the contract, the property will continue to be subject to its extended use agreement as affordable housing.<sup>72</sup> If the owner accepts the offer, the property will be sold to the purchaser. If the owner

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<sup>67</sup> Low Income Housing Tax Credits are provided by the federal government to rental housing developers in exchange for a commitment to provide affordable rents and are usually sold to investors to raise project equity. The LIHTC program is governed by the U.S. Department of Treasury and Florida’s allocation is administered by Florida Housing. Under the LIHTC program, successful applicants are provided with a dollar-for-dollar reduction in federal tax liability in exchange for the development or rehabilitation of units to be occupied by very low- and low-income households.

<sup>68</sup> Internal Revenue Code Section 42(h)(6)(A).

<sup>69</sup> Internal Revenue Code Section 42(h)(6)(E)(i)(II).

<sup>70</sup> Internal Revenue Code Section 42(h)(6)(F).

<sup>71</sup> Fla. Admin. Code R. 67-48.031.

<sup>72</sup> Fla. Admin. Code R. 67-48.031(11).

rejects the offer or fails to act upon the offer, the owner will continue to be subject to the extended use agreement and cannot submit another qualified contract request for the development.

In 2022, the Legislature codified certain definitions and procedures related to the qualified contract process. In doing so, the moment when a bona fide contract becomes a qualified contract shifted from when the purchaser makes the first deposit to when the second earnest money deposit is made.<sup>73</sup> However, under the scenario where the seller refuses to sell after being presented a bona fide offer the second deposit will never be made, making this definition unworkable.

*Effect of Proposed Changes:*

**Section 27** amends s. 420.503(36), F.S., to provide that the FHFC shall deem a bona fide contract to be a qualified contract at the time the bona fide contract is presented to the owner and the initial earnest money deposit is deposited in escrow, as opposed to when the second deposit is made.

*Present Situation:*

***Florida Housing Finance Corporation Structure and Board of Directors***

The FHFC is a public corporation created within the DEO as a separate budget entity not subject to control, supervision, or direction by the DEO.<sup>74</sup> The FHFC consists of a board of directors composed of the Secretary of the DEO as an ex officio and voting member, or a senior-level agency employee designated by the secretary, and eight members appointed by the Governor subject to confirmation by the Senate from the following:

- (a) One citizen actively engaged in the residential home building industry.
- (b) One citizen actively engaged in the banking or mortgage banking industry.
- (c) One citizen who is a representative of those areas of labor engaged in home building.
- (d) One citizen with experience in housing development who is an advocate for low-income persons.
- (e) One citizen actively engaged in the commercial building industry.
- (f) One citizen who is a former local government elected official.
- (g) Two citizens of the state who are not principally employed as members or representatives of any of the groups specified in paragraphs (a)-(f).<sup>75</sup>

Members are appointed for four-year terms and vacancies are filled for the unexpired term.<sup>76</sup> The Governor may suspend a member for cause, including failure to attend 3 meetings in a 12-month period, and suspended members are subject to removal or reinstatement by the Senate.<sup>77</sup>

Members receive no compensation for services, are entitled to necessary expenses, and must file full and public disclosure of financial interests.<sup>78</sup>

<sup>73</sup> Chapter 2022-194, s. 1, Laws of Fla.

<sup>74</sup> Section 420.504, F.S.

<sup>75</sup> Section 420.504(3), F.S.

<sup>76</sup> Section 420.504(4), F.S.

<sup>77</sup> *Id.*

<sup>78</sup> Section 420.504(6), (7), F.S.

*Effect of Proposed Changes:*

**Section 28** amends s. 420.504, F.S., to provide that the board will include two additional members, one appointed by the President of the Senate and one appointed by the Speaker of the House of Representatives. Additionally, vacancies shall be filled by the party who made the original member's appointment.

*Present Situation:***State Housing Strategy Act**

The State Housing Strategy Act, located in Part I, of ch. 420, F.S., was created by the Legislature in 1992 to guarantee adequate affordable housing for Florida residents.<sup>79</sup> The State Housing Strategy posits the goal of assuring that by the year 2010 each Floridian shall have decent and affordable housing. "Policies," guidelines for state agencies and programs to follow, are divided into sections: housing need, public-private partnerships, preservation of housing stock, public housing, and housing production or rehabilitation programs. This forward-looking and optimistic set of ideas and strategies has not been amended in 30 years.

The State Housing Strategy Act also includes certain provisions implementing state programs in the pursuit of goals outlined. For example, the DEO and the FHFC annually coordinate with the Shimberg Center for Housing Studies at the University of Florida<sup>80</sup> to develop and maintain statewide data on affordable housing needs for specific populations.<sup>81</sup> These studies are then used to review and evaluate existing affordable housing accommodations to ensure that they are consistent with current need assessments and to recommend any improvements or plan modifications.<sup>82</sup>

*Effect of Proposed Changes:*

**Section 26** amends s. 420.003, F.S., to substantially revise and reword the State Housing Strategy, maintaining the goal of assuring that each Floridian has safe, decent, and affordable housing. The bill retains strategies requiring local buy-in to state-funded developments, interlocal coordination, and cost-effective public-private partnerships, while adding language emphasizing the need to avoid sprawl to minimize separation of housing and employment as well as ecological impact.

The State Housing Strategy is separated into the following three categories.

***Legislative Intent***

This section states that it is the intent of the act to articulate a strategy to carry the state toward assuring that each Floridian has safe, decent, and affordable housing. The strategy must involve

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<sup>79</sup> Section 420.0003, F.S.

<sup>80</sup> The Shimberg Center for Housing Studies was established at the University of Florida in 1988 to "facilitate safe, decent and affordable housing throughout the state of Florida" and was named after Jim Shimberg Sr., a Tampa homebuilder dedicated to affordable housing. The Center's Florida Housing Data Clearinghouse provides public information on Florida housing needs, programs and demographics. For more information visit: <http://www.shimberg.ufl.edu/aboutUs2.html> (last visited on Feb. 19, 2023).

<sup>81</sup> Section 420.0003(4)(c), F.S.

<sup>82</sup>*Id.*

state and local governments working in partnership with communities and the private sector, and must encompass both financial and regulatory commitment.

### ***Policies***

- *Housing Production and Rehabilitation Programs*, which enumerates state programs; emphasizes the need to leverage state funds efficiently; and highlights innovative solutions such as utilizing publically held land, community-led planning such as urban infill; maximizing efficiency through promotion of high-density and mixed-use developments; and modern housing concepts such as manufactured or 3D-printed homes.
- *Public Private Partnerships*, which emphasizes the need for cost effective, data driven cooperative efforts.
- *Preservation of Housing Stock*, which calls for the preservation of existing stock through rehabilitation programs and neighborhood revitalization efforts.
- *Unique Housing Needs*, which covers the wide range of need for safe, decent, and affordable housing among the various groups of citizens most in need, including those with disabilities and the elderly.

### ***Implementation***

This section, largely maintained from the original State Housing Strategy, incorporates the FHFC and the Shimberg Center for Housing Studies into the state housing strategy. Further, the bill adds a series of studies required to be conducted by OPPAGA. The reports will be conducted on a rotating basis and include studying:

- Innovative affordable housing strategies implemented by other states, their effectiveness, and the potential for implementation in Florida;
- Affordable housing policies enacted by local governments, including interlocal cooperation; and
- Existing state-level housing rehabilitation, production, preservation, and finance programs to determine their consistency with the goals of the state housing strategy, and recommendations for improved program linkages.

### ***Present Situation:***

#### **State-Owned Lands**

##### ***Land Use Plans***

All lands held by the Board of Trustees of the Internal Improvement Trust Fund<sup>83</sup> (board) are required to be held in trust for the use and benefit of the people of the state.<sup>84</sup> Each manager of nonconservation lands<sup>85</sup> is required to submit to the division a land use plan at least every 10 years in a form and manner prescribed by rule by the board.<sup>86</sup> All land use plans, whether for single-use or multiple-use properties, must include an analysis of the property to determine the

<sup>83</sup> Consisting of the Governor, as the chair, the Chief Financial Officer, the Attorney General, and the Commissioner of Agriculture. FLA. CONST. art. IV, s. 4.

<sup>84</sup> Section 253.001, F.S.

<sup>85</sup> "Conservation lands" include those held for conservation, recreation, historic preservation, and other uses. Section 253.034(2)(c), F.S. All other lands held by the state, such as those used for government functions, are nonconservation lands.

<sup>86</sup> Section 253.034(5), F.S.

potential use of private land managers to facilitate the restoration or management of these lands.<sup>87</sup>

*Effect of Proposed Changes:*

**Section 23** amends s. 253.034(5), F.S., to provide that a land use plan submitted for nonconservation lands must include an analysis of whether such lands would be more appropriately transferred to a local government for affordable housing related purposes.

*Present Situation:*

**Surplus Lands**

The board determines which lands it holds title to may be surplus.<sup>88</sup> Conservation lands may only be surplus if the board, by an affirmative vote of at least two-thirds, determines that the lands are no longer needed for conservation purposes.<sup>89</sup> The board may dispose of all other lands if the board, by an affirmative vote of at least three members, determines whether the lands are no longer needed.<sup>90</sup>

If the board determines that nonconservation lands are no longer needed, it made dispose of such surplus lands by vote.<sup>91</sup> Requests for surplus lands may be made by any public or private entity or person.<sup>92</sup> County or local government requests for surplus lands through purchase or exchange are expedited throughout the surplus process.<sup>93</sup> The board is required to consider such requests within 90 days of the board's receipt of the request.<sup>94</sup> Surplus lands conveyed to a local government for affordable housing must be disposed of by the local government pursuant to s. 125.379, F.S., or s. 166.0451, F.S., discussed in further detail below.

*Effect of Proposed Changes:*

**Section 24** amends s. 253.0341(1), F.S., to clarify that local government requests for surplus lands are expedited throughout the process regardless of the means of transfer, to include donation.

*Present Situation:*

**Job Growth Grant Fund**

The Florida Job Growth Grant Fund, created by the legislature in 2017, is an economic development program within the DEO designed to promote public infrastructure and workforce training across the state.<sup>95</sup> Eligible projects include state or local public infrastructure projects to promote economic recovery, rehabilitation of the Herbert Hoover Dike, and workforce training

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<sup>87</sup> *Id.*

<sup>88</sup> Section 253.0341, F.S.

<sup>89</sup> FLA. CONST. art. X, s. 18.

<sup>90</sup> Section 253.0341, F.S.

<sup>91</sup> Section 253.0341(1), F.S.

<sup>92</sup> Section 253.0341(11), F.S.

<sup>93</sup> Section 253.0341(1), F.S.

<sup>94</sup> Section 253.0341(10), F.S.

<sup>95</sup> Section 288.101, F.S.

grants that support college and technical center workforce skills programs. Proposals are reviewed by the DEO, the Department of Transportation, and Enterprise Florida, Inc., and chosen by the Governor to meet the demand for workforce or infrastructure needs in the community they are awarded to.<sup>96</sup> Contracts for projects approved by the Governor and funded pursuant to this program must be administered by the DEO.<sup>97</sup>

*Effect of Proposed Changes:*

**Section 25** amends s. 288.101(2), F.S., to provide that public infrastructure projects that support affordable housing are an authorized use of Job Growth Grant Fund funding. This provision sunsets 2033.

*Present Situation:*

**Community Contribution Tax Credit Program**

In 1980, the Legislature established the Community Contribution Tax Credit Program (CCTCP) to encourage private sector participation in community revitalization and housing projects.<sup>98</sup> Broadly, the CCTCP offers tax credits to businesses or persons (“taxpayers”) anywhere in Florida that contribute<sup>99</sup> to certain projects undertaken by approved CCTCP sponsors.<sup>100</sup> Eligible projects include activities undertaken by an eligible sponsor that are designed to accomplish one of the following purposes:

- To construct, improve, or substantially rehabilitate housing that is affordable to low-income households or very-low-income households as those terms are defined in s. 420.9071;
- To provide commercial, industrial, or public resources and facilities; or
- To improve entrepreneurial and job-development opportunities for low-income persons.<sup>101</sup>

The DEO administers the CCTCP, and its responsibilities include reviewing sponsor project proposals and tax credit applications, periodically monitoring projects, and marketing the CCTCP in consultation with the FHFC and other statewide and regional housing and financial intermediaries.<sup>102</sup> Once approved by the DEO, the taxpayer must claim the community contribution tax credit from the DOR.

The credit is calculated as 50 percent of the taxpayer’s annual contribution, but a taxpayer may not receive more than \$200,000 in credits in any one year.<sup>103</sup> The taxpayer may use the credit against corporate income tax, insurance premiums tax, or as a refund against sales tax.<sup>104</sup> Unused

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<sup>96</sup> Section 288.101(2), F.S.

<sup>97</sup> Section 288.101(4), F.S.

<sup>98</sup> Chapter 80-249, Laws of Fla. The CCTCP is one of the state incentives available under the Florida Enterprise Zone Act, which was partially repealed on December 31, 2015.

<sup>99</sup> Sections 212.08(5)(p)2.a., 220.183(2)(a), and 624.5105(5)(a), F.S., require community contributions to be in the form of cash or other liquid assets, real property, goods or inventory, or other physical resources.

<sup>100</sup> Sections 212.08(5)(p); 220.183; and 624.5105, F.S.

<sup>101</sup> Sections 212.08(5)(p)2.b.; 220.183(2)(d); 624.5105(2)(b); and 220.03(1)(t), F.S.

<sup>102</sup> Sections 212.08(5)(p)4.; 220.183(4); and 624.5105(4), F.S.

<sup>103</sup> Sections 212.08(5)(p)1.; 220.183 (1)(a) and (b); and 624.5105(1), F.S.

<sup>104</sup> Sections 212.08(5)(p); 220.183; and 624.5105, F.S.

credits against corporate income taxes and insurance premium taxes may be carried forward for five years.<sup>105</sup> Unused credits against sales taxes may be carried forward for three years.<sup>106</sup>

The DOR may approve \$14.5 million in annual funding for projects that provide homeownership opportunities for low-income and very-low-income households or housing opportunities for persons with special needs and \$4.5 million for all other projects. “Persons with special needs” is defined in current statute to include adults requiring independent living services, young adults formerly in foster care, survivors of domestic violence, and people receiving Social Security Disability Insurance, Supplemental Security Income, or veterans’ disability benefits.<sup>107</sup> The Legislature extended the CCTCP in 1984, 1994, 2005, 2014, and 2015,<sup>108</sup> and made the program permanent in 2017.<sup>109</sup> It has also amended the annual tax credit allocation of the CCTCP on numerous occasions.<sup>110</sup> Each time the allocation has been increased, the number of projects has increased to match the larger allocation.

*Effect of Proposed Changes:*

**Sections 12 and 19** amend ss. 212.08 and 220.183, F.S., respectively, to provide that for the 2023-2024 fiscal year \$25 million, rather than \$14.5 million, is the total amount of tax credits which may be granted for projects that provide homeownership opportunities for low- and very-low income households or housing opportunities for persons with special needs.

*Present Situation:*

**Local Governments and Affordable Housing Development**

***Consistency with Comprehensive Plans***

All development, both public and private, and all development orders<sup>111</sup> approved by local governments must be consistent with the local government’s comprehensive plan.<sup>112</sup> The Growth Management Act requires every city and county to create and implement a comprehensive plan to guide future development.<sup>113</sup> A comprehensive plan is intended to provide for the future use of land, which contemplates a gradual and ordered growth, and establishes a long-range maximum limit on the possible intensity of land use.

A locality’s comprehensive plan lays out the locations for future public facilities, including roads, water and sewer facilities, neighborhoods, parks, schools, and commercial and industrial developments. A comprehensive plan is made up of 10 required elements, each laying out

<sup>105</sup> Sections 220.183(1)(e) and (g); and 624.5105, F.S.

<sup>106</sup> Sections 212.08(5)(p)1.b. and f., F.S.

<sup>107</sup> Section 420.0004(13), F.S.

<sup>108</sup> Chapters 84-356, 94-136, 2005-282, 2014-38, and 2015-221, Laws of Fla.

<sup>109</sup> Chapter 2017-36, Laws of Fla.

<sup>110</sup> Chapters 94-136, 98-219, 99-265, 2005-282, 2006-78, 2008-153, 2015-221, and 2017-36, Laws of Fla.

<sup>111</sup> “Development order” means any order granting, denying, or granting with conditions an application for a development permit. See s. 163.3164(15), F.S. “Development permit” includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land. See s. 163.3164(16), F.S.

<sup>112</sup> Section 163.3194(3), F.S.

<sup>113</sup> Section 163.3167(2), F.S.

regulations for a different facet of development.<sup>114</sup> Most relevant among them as it pertains to the bill are the Future Land Use Element and the Housing Element.

- The Future Land Use Element designates proposed future general distribution, location, and extent of the uses of land. Specified use designations include those for residential, commercial, industry, agriculture, recreation, conservation, education, and public facilities.<sup>115</sup> The approximate acreage and the general range of density or intensity of use must be provided for each land use category.<sup>116</sup>
- The Housing Element sets forth guidelines and strategies for the creation and preservation of affordable housing for all current and anticipated future residents of the jurisdiction, elimination of substandard housing conditions, provision of adequate sites for future housing, and distribution of housing for a range of incomes and types.<sup>117</sup>

A comprehensive plan is implemented through the adoption of land development regulations<sup>118</sup> that are consistent with the plan, and which contain specific and detailed provisions necessary to implement the plan.<sup>119</sup> Such regulations must, among other prescriptions, regulate the subdivision of land and the use of land for the land use categories in the land use element of the comprehensive plan.<sup>120</sup> Substantially affected persons have the right to maintain administrative actions which assure that land development regulations implement and are consistent with the comprehensive plan.<sup>121</sup>

Development that does not conform to the comprehensive plan may not be approved by a local government unless the local government amends its comprehensive plan first. State law requires a proposed comprehensive plan amendment to receive two public hearings, the first held by the local planning board, and subsequently by the governing board.<sup>122</sup> Following the hearings they must transmit the plan to several statutorily identified reviewing agencies, including the DEO for review.<sup>123</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>124</sup>

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<sup>114</sup> Section 163.3177(6), F.S. The 10 required elements include capital improvements; future land use plan; transportation; general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge; conservation; recreation and open space; housing; coastal management; intergovernmental coordination; and property rights. Throughout statutes exist plans and programs that may be added as optional elements.

<sup>115</sup> Section 163.3177(6)(a), F.S.

<sup>116</sup> Section 163.3177(6)(a), F.S.

<sup>117</sup> Section 163.3177(6)(f), F.S.

<sup>118</sup> “Land development regulations” means ordinances enacted by governing bodies for the regulation of any aspect of development and includes any local government zoning, rezoning, subdivision, building construction, or sign regulations or any other regulations controlling the development of land, except that this definition does not apply in s. [163.3213](#). See s. [163.3164\(26\)](#), F.S.

<sup>119</sup> Section 163.3202, F.S.

<sup>120</sup> *Id.*

<sup>121</sup> Section 163.3213, F.S.

<sup>122</sup> Sections 163.3174(4)(a) and 163.3184, F.S.

<sup>123</sup> Section 163.3184, F.S.

<sup>124</sup> See ss. 163.3184 and 380.06, F.S. In the Expedited State Review Process, DEO reviews and approves or amends the proposed comprehensive plan amendment. This process can take 4 to 6 months. The State Coordinated Review Process is a more thorough, complex, multi-phase process. For more information, see Florida Department of Economic Opportunity, *Amendments that Must Follow the State Coordinated Review Process; Procedures and Timeframes*, available at



### ***Zoning Regulations***

A comprehensive plan's Future Land Use Element establishes a range of allowable uses and densities and intensities over large areas, and the specific use and intensities for specific parcels within that range are decided by a more detailed, implementing zoning map.<sup>125</sup>

Zoning maps and zoning districts are adopted by a local government for developments within each land use category or sub-category. While land uses are general in nature, one or more zoning districts may apply within each land use designation.<sup>126</sup> Common regulations within the zoning map districts include density,<sup>127</sup> height and bulk of buildings, setbacks, and parking requirements.<sup>128</sup> Regulations for a zoning category in a downtown area may allow for more density and height than allowed in a suburb, for instance.

If a developer or landowner believes that a proposed development may have merit but it does not meet the requirements of a zoning map in a jurisdiction, the developer or landowner can seek a rezoning through a rezoning application which is reviewed by the local government and voted on by the governing body.<sup>129</sup> If a property has unique circumstances or small nonconformities but otherwise meets zoning regulations, local governments may ease restrictions on certain regulations such as building size or setback through an application for a variance.<sup>130</sup> However, any action to rezone or grant a variance must be consistent with the local government's comprehensive plan.

Ordinances or resolutions that change the actual list of permitted, conditional, or prohibited uses within a zoning category or ordinances or resolutions initiated by the local government that change the actual zoning map designation of a parcel or parcels of land must follow additional enhanced notice requirements.<sup>131</sup>

- If the area affected is less than 10 acres, the local government is required to notify by mail each property owner and hold a public meeting to discuss the ordinance or resolution before passage.<sup>132</sup>

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<https://floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/amendments-that-must-follow-the-state-coordinated-review-process-procedures-and-timeframes> (last visited Dec. 27, 2022).

<sup>125</sup> Richard Grosso, A Guide to Development Order "Consistency" Challenges Under Florida Statutes Section 163.3215, 34 J. Envtl. L. & Litig. 129, 154 (2019) citing Brevard Cty. v. Snyder, 627 So. 2d 469, 475 (Fla. 1993).

<sup>126</sup> Indian River County, General Zoning Questions, available at

<https://www.ircgov.com/communitydevelopment/planning/FAQ.htm#zoning1> (last visited Jan. 20, 2023)

<sup>127</sup> "Density" means an objective measurement of the number of people or residential units allowed per unit of land, such as residents or employees per acre. See s. 163.3164(12), F.S.

<sup>128</sup> Supra note 126.

<sup>129</sup> City of Tallahassee, Application For Rezoning Review, available at

<https://www.talgov.com/Uploads/Public/Documents/place/zoning/cityrezinfsh.pdf> (last visited Jan. 20, 2023)

<sup>130</sup> City of Tallahassee, Variance and Appeals, available at

[https://www.talgov.com/Uploads/Public/Documents/growth/forms/boaa\\_variance.pdf](https://www.talgov.com/Uploads/Public/Documents/growth/forms/boaa_variance.pdf) (last visited Jan. 20, 2023) and

Seminole County, Variance Processes available at <https://www.seminolecountyfl.gov/departments-services/development-services/planning-development/boards/board-of-adjustment/variance-process-requirements.stml> (last visited Jan. 20, 2023)

<sup>131</sup> See sections 125.66(4) and 166.041(3), F.S.

<sup>132</sup> *Id.*

- If the area affected is 10 acres or greater the local government must hold two separate meetings at which to discuss the changes, and notice the public through either mail to each property owner or to the public generally by newspaper.<sup>133</sup>

*Effect of Proposed Changes:*

**Section 3**, in part, amends s. 125.01055, F.S., to preempt counties on zoning, density, and height for certain multi-family rental developments in commercial and mixed-use areas. Specifically, a county must authorize multifamily and mixed-use residential<sup>134</sup> as allowable uses in any area zoned for commercial or mixed-use if at least 40 percent of the units will be affordable for at least 30 years and serve incomes up to 120% AMI. A county may not require a zoning, land use change, or a comprehensive plan amendment for the building height, zoning, and densities authorized in this bill.

A county may not restrict the density of such development below the highest allowed density on any unincorporated land in the county where residential development is allowed. Additionally, a county may not restrict the height of such development below the highest allowed height for a commercial or residential development in its jurisdiction within 1 mile of the proposed development or 3 stories, whichever is higher.

An application for such development must be administratively approved and no further action is required from the board of county commissioners if the development satisfies the county's land development regulations for multifamily in areas zoned for such use and is otherwise consistent with the jurisdiction's comprehensive plan. A county must consider reducing parking requirements for these developments if they are located within one-half mile of a major transit stop.

These provisions expire on October 1, 2033.

The bill also makes a technical change, correcting an internal cross-reference in subsection (5).

**Section 5** amends s. 166.04151, F.S., to make identical changes in section 3, as applied to municipalities.

*Present Situation:*

**Expedited Development Projects for Affordable Housing**

In 2019, the Legislature enacted a provision to authorize counties and municipalities to approve the development of housing that is affordable on any parcel zoned for residential, commercial, or industrial use, regardless of any state or local law or regulation that would otherwise preclude such development.<sup>135</sup> At least 10 percent of the units in a project on a commercial or industrial parcel must be affordable and the developer of the project must agree to not seek funding from the FHFC's SAIL program.<sup>136</sup>

<sup>133</sup> *Id.*

<sup>134</sup> At least 65 percent of the total square footage must be used for residential purposes.

<sup>135</sup> Sections 125.01055(6) and 166.04151(6), F.S.

<sup>136</sup> *Id.*

This provision allows local governments to expedite the development of affordable housing by allowing locals to bypass state law and their comprehensive plans and zoning regulations that would otherwise preclude or delay such development.

*Effect of Proposed Changes:*

**Section 3**, in part, amends s. 125.01055(6), F.S., to remove a county's ability to approve affordable housing on *residential* parcels by bypassing state and local laws that may otherwise preclude such development. The bill also removes the SAIL restriction to allow SAIL developments to utilize this expedited approval process on commercial and industrial parcels.

**Section 5** amends s. 166.04151, F.S., to make identical changes in section 3, as applied to municipalities.

*Present Situation:*

**Local Government-owned Property**

Since 2006 counties and cities have been required to prepare an inventory of publically owned real property that would be appropriate for use as affordable housing, and update the inventory every three years.<sup>137</sup> The list must include the address and legal description of each such real property, specifying whether it is vacant or improved. The list must be reviewed and adopted by resolution at public hearing.

Properties identified as appropriate for use as affordable housing may be:

- Sold and the proceeds used to purchase land for the development of affordable housing;
- Sold with a restriction that requires the development of permanent affordable housing on the land;
- Donated to a nonprofit housing organization for the construction of permanent affordable housing; or
- Be otherwise made available for the use for the production and preservation of permanent affordable housing.<sup>138</sup>

*Effect of Proposed Changes:*

**Sections 4 and 7** amend ss. 125.379 and 166.0451, F.S., respectively, to provide that counties and cities must produce their real property inventory lists referenced above by October 1, 2023, and every three years thereafter, and make such list available on the county or city website. Counties and cities must also include real property owned by dependent special districts within their boundaries.

The bill further adds that acceptable uses of property identified as appropriate for affordable housing include utilization through a long-term land lease requiring the development and maintenance of affordable housing.

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<sup>137</sup> Sections 125.379 and 166.0451, F.S.

<sup>138</sup> *Id.*

The bill includes certain best practices counties and cities are encouraged to adopt in creating surplus land programs, including:

- Establishing eligibility criteria for the receipt or purchase of surplus land by developers;
- Making the process for requesting surplus lands publicly available; and
- Ensuring long-term affordability through ground leases by retaining the right of first refusal to purchase property that would otherwise be sold or offered at market rate.

Additionally, **Section 36** amends s. 420.531, F.S., to expressly authorize the FHFC to contract with the Florida Housing Coalition, Florida's provider for statewide training and technical assistance funded by the Catalyst Program,<sup>139</sup> to provide assistance to local governments related to surplus lands programs and executing contracts related to bidding for affordable housing projects and land-lease developments.

*Present Situation:*

### **Expedited Building Permits**

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>140</sup>

Every local government must enforce the Florida Building Code and issue building permits.<sup>141</sup> It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government enforcing agency or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.<sup>142</sup>

Any construction work that requires a building permit also requires plans and inspections to ensure the work complies with the building code. The building code requires certain building, electrical, plumbing, mechanical, and gas inspections.<sup>143</sup> Construction work may not be done beyond a certain point until it passes an inspection.

Current law provides a set of deadlines for ordinary processing of a building permit, chief among them that a local government must approve, approve with conditions, or deny an application for a building permit within 120 days following receipt of a completed application.<sup>144</sup> Various laws require or encourage local governments to further expedite the permitting process in certain situations, including for those developments utilizing SAIL funding.<sup>145</sup> These statutes largely leave the nature of such expediting to the local governments, resulting in varied experiences throughout the state.

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<sup>139</sup> Section 420.531, F.S.

<sup>140</sup> Section 553.72, F.S.

<sup>141</sup> Sections 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

<sup>142</sup> Sections 125.56(4)(a), 553.79(1), F.S.

<sup>143</sup> Section 110 Seventh edition of the Florida Building Code (Building).

<sup>144</sup> Section 553.792(1)(a), F.S.

<sup>145</sup> See sections 403.973(3), 420.5087(6)(c)8., and 553.80(6)(b)1., F.S.

*Effect of Proposed Changes:*

**Section 38** amends s. 553.792, F.S., to require that a local government maintain on its website a policy containing procedures and expectations for expedited processing of those building permits and development orders required by law to be expedited.

*Present Situation:***Rent Control**

Counties and municipalities are permitted to pass rent control ordinances under strict circumstances.<sup>146</sup> Florida law provides that local governments may not impose price controls on rent unless the entity finds that such a price control would “eliminate an existing housing emergency which is so grave as to constitute a serious menace to the general public.”<sup>147</sup> The measure enacting rent control, in addition to normal requirements for passing an ordinance, must expire in one year and must be approved by the voters in the locality.<sup>148</sup>

*Effect of Proposed Changes:*

**Sections 2 and 6** amend ss. 125.0103 and 166.043, F.S., respectively, to preempt local governments from enacting ordinances controlling the price of rent under any circumstances.

*Present Situation:***Keys Workforce Housing Initiative**

The Florida Keys Area Protection Act<sup>149</sup> provides, in part, that comprehensive plan amendments within the covered area, which includes the majority of Monroe County, must comply with “goals, objectives and policies to protect public safety and welfare in the event of a natural disaster by maintaining a hurricane evacuation clearance time for permanent residents of no more than 24 hours.”<sup>150</sup> Monroe County, applicable municipalities, and the DEO have agreed to use a multi-phase evacuation model and limit residential building permits going forward in order to comply with these standards.<sup>151</sup>

In response to need for affordable housing, the DEO developed, and the Administration Commission approved in 2018, the Keys Workforce Housing Initiative (“Initiative”), which provided for up to 1,300 building permit allocations for deed restricted affordable housing properties agreeing to evacuate at least 48 hours in advance of a hurricane landfall.<sup>152</sup>

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<sup>146</sup> Sections 125.0103 and 166.043, F.S.

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

<sup>148</sup> *Id.*

<sup>149</sup> Section 380.0552, F.S.

<sup>150</sup> *Id.* at (9)(e)2.

<sup>151</sup> See *Mattino v. City of Marathon*, 345 So.3d 939 (Fla. 3d DCA 2022), for detailed background on this section.

<sup>152</sup> These residents would be part of the first evacuation phase, which under most circumstances evacuates in the 48 to 24 hour window before a hurricane. Florida Administration Commission, Exhibit b, Supporting Documentation for Agenda Item 2., Presentation of the Department of Economic Opportunity’s Keys Workforce Housing Initiative, *available at* <https://www.myflorida.com/myflorida/cabinet/adcom/supportingdocs/20180613/item3b.pdf> (last visited Feb. 24, 2023).

In 2022, the Florida Third District Court of Appeal found that the Initiative’s conditional approval of those residential building permits did not successfully remove those residents from consideration of the 24-hour evacuation time constraint, and found the comprehensive plan amendments in certain jurisdictions that would have enabled development under the Initiative not in compliance with state law.<sup>153</sup>

*Effect of Proposed Changes:*

**Section 42** provides through chapter law that the Initiative is considered an exception to the evacuation time constraints of s. 380.0552(9)(a)2., F.S., by requiring that workforce housing properties receiving permits through the program agree to evacuate at least 48 hours in advance of hurricane landfall. The section provides that a comprehensive plan amendment approved by the Department of Economic Opportunity to implement the initiative is valid, and local governments may adopt ordinances and regulations to implement such a plan amendment.

*Present Situation:*

**Ad Valorem Taxation**

The ad valorem tax or “property tax” is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of January 1 of each year.<sup>154</sup> The property appraiser annually determines the “just value”<sup>155</sup> of property within the taxing jurisdiction and then applies relevant exclusions, assessment limitations, and exemptions to determine the property’s “taxable value.”<sup>156</sup> Tax bills are mailed in November of each year based on the previous January 1 valuation, and payment is due by March 31 of the following year.

The Florida Constitution prohibits the state from levying ad valorem taxes,<sup>157</sup> and it limits the Legislature’s authority to provide for property valuations at less than just value, unless expressly authorized.<sup>158</sup>

The just valuation standard generally requires the property appraiser to consider the highest and best use of property;<sup>159</sup> however, the Florida Constitution authorizes certain types of property to be valued based on their current use (classified use assessments), which often results in lower assessments. Properties that receive classified use treatment in Florida include agricultural land,

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<sup>153</sup> *Id.* at 943-46.

<sup>154</sup> Both real property and tangible personal property are subject to tax. Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

<sup>155</sup> Property must be valued at “just value” for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm’s-length transaction. *See Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

<sup>156</sup> *See* s. 192.001(2) and (16), F.S.

<sup>157</sup> FLA. CONST. art. VII, s. 1(a).

<sup>158</sup> *See* FLA. CONST. art. VII, s. 4.

<sup>159</sup> Section 193.011(2), F.S.

land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes;<sup>160</sup> land used for conservation purposes;<sup>161</sup> historic properties when authorized by the county or municipality;<sup>162</sup> and certain working waterfront property.<sup>163</sup>

### ***Ad Valorem Exemption for Literary, Scientific, Religious, or Charitable Organizations***

The Florida Constitution allows the Legislature to exempt from ad valorem taxation portions of property that are used predominantly for educational, literary, scientific, religious or charitable purposes.<sup>164</sup> The Legislature has implemented these exemptions and set forth criteria to determine whether property is entitled to an exemption.<sup>165</sup>

To determine whether a property's use qualifies for an education, literary, scientific, religious, or charitable exemption, the property appraiser must consider the nature and extent of the qualifying activity compared to other activities or other uses of the property.<sup>166</sup>

Incidental use of property for an exempt purpose will not qualify the property for an exemption nor will the incidental use of the property for a non-exempt purpose impair an exemption.<sup>167, 168</sup>

Property claimed as exempt which is used for profitmaking purposes is not exempt and is subject to ad valorem taxation; however, the Legislature has allowed certain property to remain exempt even when used for profitmaking purposes when the use of the property does not require a business or occupational license and the revenue derived from the profitmaking activity is used wholly for exempt purposes.<sup>169</sup>

### ***Ad Valorem Exemption for Charitable Purposes and Affordable Housing***

In 1999, the Legislature authorized a charitable use property tax exemption for property owned by a nonprofit corporation that provides affordable housing.<sup>170, 171</sup> The exemption is limited to only those portions of the property that house persons or families whose income does not exceed

<sup>160</sup> FLA. CONST. art. VII, s. 4(a).

<sup>161</sup> FLA. CONST. art. VII, s. 4(b).

<sup>162</sup> FLA. CONST. art. VII, s. 4(e).

<sup>163</sup> FLA. CONST. art. VII, s. 4(j).

<sup>164</sup> FLA. CONST. art. VII, s. 3(a).

<sup>165</sup> Section 196.196, F.S.

<sup>166</sup> Section 196.196(1), F.S.

<sup>167</sup> Section 196.196(2), F.S.

<sup>168</sup> *Underhill v. Edwards*, 400 So.2d 129, 132 (Fla. 5th DCA 1981). The district court found that trustees of a private not-for-profit hospital were not entitled to an exemption on the new wing's first floor, which was used for a private purpose and not for a charitable purpose or other exempt purpose, despite the fact that the portion of the hospital used for a non-exempt purpose represented only a very small percentage of the otherwise exempt property; see also *Central Baptist Church of Miami, Florida Incorporated v. Dade County, Florida, et. al.*, 216 So.2d 4, 6 (Fla 1968). The Supreme Court found that "limited part time rental of a portion of the church lot for commercial parking on weekday business hours is reasonably incidental to the primary use of the church property as a whole for church or religious purposes and is not a sufficiently divergent commercial use that eliminates the exemption as to the commercial parking lot portion of the property."

<sup>169</sup> See section 196.196(4), F.S.

<sup>170</sup> Chapter 99-378, s. 15, Laws of Fla. (creating s. 196.1978, F.S, effective July 1, 1999).

<sup>171</sup> The not-for-profit corporation must qualify as charitable under s. 501(c)(3) of the Internal Revenue Code and other federal regulations. See 26 U.S.C. § 501(c)(3) ("charitable purposes" include relief of the poor, the distressed or the underprivileged, the advancement of religion, and lessening the burdens of government).

120 percent of the median income of the state, the metropolitan area, or the county where the person lives, whichever is greater.

In 2017, the Legislature authorized a charitable use property tax discount for property with an agreement with the FHFC where more than 70 of the units provide affordable housing. The discount is limited to only those portions of the property that house persons or families whose income does not exceed 80 percent of the median income of the state, the metropolitan area, or the county where the person lives, whichever is greater. The tax discount amounted to 50 percent of the taxable value of eligible units and was applicable to taxes assessed after the 15th completed year of an agreement with the FHFC.<sup>172</sup> In 2021, the Legislature increased the 50 percent discount to a full exemption.<sup>173</sup>

*Effect of Proposed Changes:*

The bill includes three new property tax exemptions:

***Nonprofit Land Lease Exemption***

**Section 8**, in part, amends s. 196.1978(1), F.S., to provide that land owned entirely by a nonprofit entity which is leased for at least 99 years for the purpose of and is in fact used for providing affordable housing for extremely-low-, very-low-, low-, or moderate-income persons or families is exempt from ad valorem taxation.

In order to receive this exemption the improvements on the land being used for affordable housing purposes must encompass more than half the square footage of all improvements on the land. This exemption first applies to the 2024 tax roll and is repealed on December 31, 2059.

***Exemption for Newly Constructed Units Providing Affordable Housing***

**Section 8**, in part, amends s. 196.1978(3), F.S., to provide a new ad valorem tax exemption for certain property used to provide affordable housing. This exemption applies throughout the state without further action by local governments.

Eligible property includes units in a newly constructed multifamily project containing more than 70 units dedicated to housing natural persons or families below certain income thresholds.

“Newly constructed” is defined as an improvement substantially completed within 5 years before the property owner’s first application for this exemption. The units must be occupied by such persons or families and rent limited so as to provide affordable housing at either the 80 or 120 percent AMI threshold. Rent for such units also may not exceed 90 percent of the fair market value rent as determined by a rental market study.

Qualified property used to provide affordable housing at the 80 to 120 percent AMI threshold receives an exemption of 75 percent of the assessed value of the units, while such property providing affordable housing up to the 80 percent AMI threshold receives a complete ad valorem tax exemption.

<sup>172</sup> Section 196.1978(2)(a), F.S. (2018) and ch. 2017-36, s. 6, Laws of Fla.

<sup>173</sup> See ch. 2021-31, s. 10, Laws of Fla.



If an occupied unit qualifies for this exemption and the following year is vacant on January 1, the vacant unit is eligible for the exemption provided it meets the other requirements and a reasonable effort is made to lease the unit to eligible persons or families.

To receive this exemption, a property owner must submit an application by March 1 to the property appraiser, accompanied by a certification notice from the FHFC. To receive a FHFC certification, a property owner must submit a request on a form including the most recent market study, which must have been conducted by an independent certified general appraiser in the preceding 3 years; a list of units for which the exemption is sought; the rent amount received for each unit, and a sworn statement restricting the property for a period of not less than 3 years to provide affordable housing.

The certification process will be administered within the FHFC. Their responsibilities include publishing the deadline for submission, reviewing each request, sending certification notices to both the successful property owner and appropriate property appraiser, notifying unsuccessful property owners with reasons for denial.

If the property appraiser determines that such an exemption has been improperly granted within the last 10 years, the property appraiser must serve the owner with a notice of intent to record a tax lien. Such property will be subject to the taxes improperly exempted, plus a penalty of 50 percent and 15 percent annual interest. Penalty and interest amounts do not apply to exemptions erroneously granted due to clerical mistake or omission by the property appraiser.

Units subject to a recorded agreement with the FHFC under ch. 420, F.S., to provide affordable housing, and property receiving an exemption under s. 196.1979, F.S., as created by the following section of the bill, are not eligible to receive this exemption.

The bill provides the FHFC rulemaking authority to implement this section.

This section first applies to the 2024 tax roll and is repealed December 31, 2059.

### ***Local Option Affordable Housing Exemption***

**Section 9** creates s. 196.1979, F.S., which provides that the governing body of a county or municipality may adopt by ordinance an ad valorem tax exemption for certain property used for providing affordable housing.

Portions of property eligible for such an exemption must be utilized to house persons or families meeting the extremely-low- or very-low-income limits specified in s. 420.0004, F.S., be contained in a multifamily project of at least 50 units where at least 20 percent are reserved for affordable housing, and have rent set such that it provides affordable housing to people in the target income bracket, or no higher than 90 percent of the fair market rent value as determined by a rental market study, whichever is less. Additionally, the property must not have been cited for three code violations in the preceding 24 months and must not have outstanding code violations or related fines.

In adopting this exemption, a local government may choose to offer either or both an exemption for two income groups: those earning up to 30 percent AMI and those earning between 30 to 60 percent AMI. The value of the exemption is up to 75 percent of the assessed value of each unit if less than 100 percent of the multifamily project's units are used to provide affordable housing, or up to 100 percent of the assessed value if 100 percent of the project's units are used to provide affordable housing.

An ordinance enacting such an exemption must:

- Be adopted under normal non-emergency procedures;
- Designate the local entity under the supervision of the governing body which must develop, receive, and review applications for certification and develop notices of determination of eligibility;
- Require the property owner to apply for certification on a form including the most recent market study, which must have been conducted by an independent certified general appraiser in the preceding three years; a list of units for which the exemption is sought; and the rent amount received for each unit;
- Require the designated entity to verify and certify property as having met the requirements for the exemption, and to notify unsuccessful applicants with the reasons for denial;
- Set out the requirements for each unit discussed above;
- Require the property owner to submit an application for exemption accompanied by certification to the property appraiser by March 1;
- Specify that such exemption only applies to taxes levied by the unit of government granting the exemption;
- Specify that the property may not receive such an exemption after the expiration of the ordinance granting the exemption;
- Identify the percentage of assessed value to be exempted, and whether such exemption applies to very-low-income, extremely-low-income, or both; and
- Require that the deadline to submit an application and a list of certified properties be published on the government's website.

Such an ordinance must expire before the fourth January 1 after adoption, however the governing body may adopt a new ordinance renewing the exemption.

If the property appraiser determines that such an exemption has been improperly granted within the last 10 years, the property appraiser must serve the owner with a notice of intent to record a tax lien. Such property will be subject to the taxes improperly exempted, plus a penalty of 50 percent and 15 percent annual interest. Penalty and interest amounts do not apply to exemptions erroneously granted due to clerical mistake or omission by the property appraiser.

This section first applies to the 2024 tax roll.

### **Miscellaneous Effects of Proposed Changes**

**Sections 17, 18, 20 and 22** amend ss. 220.02, 220.13, 220.186, and 220.222 F.S., respectively, to make conforming changes with regards to the Live Local program.

**Section 37** amends s. 420.6075, F.S., to make technical changes.

**Section 39** amends s. 624.509, F.S., to make technical changes.

**Section 40** amends s. 624.5105, F.S., to make technical changes.

**Section 43** expressly grants the DOR emergency rulemaking authority as it relates to administering the Live Local Program created by the bill. This authority is repealed July 1, 2026.

**Section 48** provides that the Legislature finds and declares that this act fulfills an important state interest.

**Section 49** provides that, except as otherwise provided, the bill will take effect July 1, 2023.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Article VII, s. 18(a) of the Florida Constitution provides, in part, that a county or municipality may not be bound by a general law requiring a county or municipality to spend funds or take an action that requires the expenditure of funds unless certain specified exemptions or exceptions are met. Under the bill counties and municipalities may be required to spend funds related to publishing certain policies and documents online, administering new tax exemptions, and updating inventories of publicly owned land.

Article VII, s. 18(b) of the Florida Constitution provides that, except upon the approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. The portions of the bill alleviating ad valorem taxes under certain circumstances for properties providing affordable housing reduce taxing authority.

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

##### **B. Public Records/Open Meetings Issues:**

None.

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

The amount directed to the State Housing Trust Fund from Documentary Stamp Tax collections does not affect the amount received by the Land Acquisition Trust Fund, as required by Article X, s. 28(a) of the Florida Constitution.

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

None.

**E. Other Constitutional Issues:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

The Revenue Estimating Conference (REC) made the following estimates for the specified bill provisions:

- The sales tax refund for building materials will reduce General Revenue Fund receipts by \$31.9 beginning in Fiscal Year 2023-2024, and will reduce local government revenues by \$8.9 million beginning in Fiscal Year 2023-2024.
- Increasing the Community Contribution Tax Credit cap will reduce General Revenue Fund receipts by \$8.4 million beginning in Fiscal Year 2023-2024, and will reduce local government revenues by \$2.1 million beginning in Fiscal Year 2023-2024.
- The Live Local Program will reduce General Revenue receipts by \$50 million in Fiscal Year 2023-2024 and by \$100 million in future years.
- The property tax exemption for certain lands leased for affordable housing will reduce local property tax revenues by \$8.5 million beginning in Fiscal Year 2023-2024.
- The local option affordable housing property tax exemption will have an indeterminate reduction to local property tax revenue due to variations in how many local governments implement the program, but the REC estimates the impact could be a reduction of local property tax revenues by \$225.1 million by Fiscal Year 2027-2028.
- The General Revenue service charge redirect will reduce General Revenue Fund receipts by \$150 million beginning in Fiscal Year 2023-2024 and will increase State Housing Trust Fund receipts by \$150 million beginning in Fiscal Year 2023-2024.
- The property tax exemption for newly constructed or substantially renovated multi-family rental units used to provide affordable housing will reduce local government revenues by \$183 million by Fiscal Year 2027-2028, with no impact in Fiscal Year 2023-2024 and increasing rates thereafter.

**B. Private Sector Impact:**

Developers of multifamily housing should see a reduction in bureaucracy, and an increase in the amount of property available, for residential development relating to housing projects which qualify for the density, height, and zoning preemptions. Developers will also benefit from tax exemption portions of the legislation, and increased funding to the FHFC.

Individuals may benefit from a resulting increase in income-limited units, overall housing production increases, and downpayment assistance eligibility.

**C. Government Sector Impact:**

Local governments may incur expenditures and lost revenues in implementing the bill with regards to updating inventory lists of publicly owned land, publishing certain procedures and regulations electronically, and administering new ad valorem tax exemptions. Local governments may benefit from the expansion of the Community Contribution Tax Credit Program, the locally held land leasing provisions, and SHIP funding.

Certain components of the bill, specifically the General Revenue service charge redirection and Live Local program, have the neutral effect of reducing general revenue while increasing funding to FHFC programs.

The DOR and the FHFC will face costs related to administration of various provisions of the bill.

The bill makes the following appropriations to the FHFC:

- \$100 million in non-recurring funds from the General Revenue Fund to implement the Florida Hometown Heroes Program;
- \$252 million in non-recurring funds from the Local Government Housing Trust Fund for the SHIP program;
- \$150 million in recurring funds from the State Housing Trust Fund for the purpose of implementing section 30 of the bill, related to SAIL project funding derived from a redirected General Revenue service charge;
- \$109 million in non-recurring funds from the State Housing Trust Fund for the SAIL program; and
- \$100 million in non-recurring funds from the General Revenue Fund to implement a competitive loan program to alleviate inflation-related cost increases for FHFC-approved multifamily projects that have not yet commenced construction; if not used by December 1, 2023, these funds are allocated to the SAIL program.<sup>174</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>174</sup> FHFC currently maintains such an effort through a program called the Construction Housing Inflation Response Program (CHIRP), which sets aside funding for projects that were previously awarded SAIL funding but risk failure due to acutely rising construction costs. See FHFC, *Construction Housing Inflation Response Program (CHIRP)*, April 29, 2022, available at [https://www.floridahousing.org/docs/default-source/programs/competitive/2022/2022--chirp/4-29-22-board-presentation-re-chirp-\(1\).pdf?sfvrsn=c94cf57b\\_0](https://www.floridahousing.org/docs/default-source/programs/competitive/2022/2022--chirp/4-29-22-board-presentation-re-chirp-(1).pdf?sfvrsn=c94cf57b_0) (last visited January 19, 2023). This provision takes effect upon the bill becoming a law.

**VIII. Statutes Affected:**

This bill substantially amends or creates the following sections of the Florida Statutes: 125.0103, 125.01055, 125.379, 166.04151, 166.043, 166.0451, 196.1978, 196.1979, 201.15, 212.08, 213.053, 215.212, 215.22, 220.02, 220.13, 220.183, 220.186, 220.1878, 220.222, 253.034, 253.0341, 288.101, 420.0003, 420.503, 420.504, 420.507, 420.5087, 420.50871, 420.50872, 420.5096, 420.531, 420.6075, 553.792, 624.509, 624.5105, and 624.51058.

This bill creates undesignated sections of Florida law.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Appropriations on February 22, 2023:**

The committee substitute:

- Clarifies that an affordable housing development does not have to obtain a zoning or land use change and must be otherwise consistent with comprehensive plan requirements except for zoning, height, and density.
- Clarifies for consideration of reduced parking requirements on certain affordable housing developments, that a major transit stop is as defined in local land use regulations.
- Amends the tax exemption for newly constructed affordable housing property by removing reference to statewide adjusted median income, correcting a reference to the income and rent limits utilized to prove affordability, and authorizing the DOR to create an application form for the exemption.
- Amends the local option property tax exemption by increasing the upper qualifying income percentage from 50 to 60 percent of the median income, authorizing local governments to deny or revoke exemptions based on multiple code violations, removing reference to statewide adjusted median income, correcting a reference to the income and rent limits utilized to prove affordability, and authorizing the DOR to create an application form for the exemption.
- Amends the Live Local tax credit donation program by making technical corrections clarifying the DOR's ability to share information with the FHFC, clarifying that a taxpayer can carry forward unused credits for 10 taxable years, rather than calendar years, clarifying that payments under the program are to be incorporated into tax underpayment calculations; and removing the requirement that authorized "projects of regional significance" be 50 percent larger than any development within a 30-mile radius.
- Provides that the building materials sales tax exemption applies to qualifying purchases made on or after July 1, 2023, and removes a related provision requiring the DOR to move a percentage of the exemption from the Local Government Half-Cent Sales Tax Trust Fund.
- Clarifies that loans under the Hometown Heroes program may be made regardless of the purchased property's form of title, be it realty or tangible personal property.

- Provides that the DEO's Keys Workforce Housing Initiative, approved by the Administration Commission in 2018, is an exception to evacuation time requirements and that comprehensive plan and land use amendments approved under that initiative are valid.

B. Amendments:

None.

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

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