

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 627 Housing

SPONSOR(S): Ways & Means Committee, State Affairs Committee, Busatta Cabrera, Lopez, V. and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 102

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) State Affairs Committee	18 Y, 3 N, As CS	Burgess	Williamson
2) Ways & Means Committee	19 Y, 2 N, As CS	Berg	Aldridge
3) Appropriations Committee			

SUMMARY ANALYSIS

The bill makes substantial revisions to affordable housing related programs and policies at the state and local level. With regards to the Florida Housing Finance Corporation (FHFC), the bill:

- Provides up to \$150 million in additional annual funding to the State Apartment Incentive Loan (SAIL) program for certain specified purposes, establishes a dedicated revenue source for the funding, and provides for a 2033 sunset.
- Provides for a sales tax refund of up to \$5,000 for building materials used for FHFC-funded units.
- Creates a tax donation program to allow corporate taxpayers to direct up to \$100 million annually to the SAIL program.
- Codifies and revises the Florida Hometown Hero down payment assistance program.
- Adds appointees by the leader of each chamber of the Legislature to the FHFC Board of Directors.
- Revises certain existing FHFC processes and procedures.

With regards to other state-level resources, the bill revises the State Housing Strategy to align with current best practices and goals, updates policies concerning state-owned lands to increase the availability of those lands for affordable housing, expands Job Growth Grant Fund eligibility to include public infrastructure projects that support affordable housing, and raises tax credits available through the Community Contribution Tax Credit Program from \$14.5 to \$25 million.

With regards to local governments, the bill preempts certain local government requirements to allow for streamlined development of affordable housing in commercial, industrial, and mixed-use zoned areas under certain circumstances, 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, removes the ability of local governments to impose rent controls in certain circumstances, requires local governments to electronically publish the inventory of publicly-owned properties that may be appropriate for affordable housing and policies for issuing expedited building orders and development permits, and provides an exception to evacuation time requirements for the Keys Workforce Housing Initiative.

The bill introduces three ad valorem property tax exemptions for: land owned by a non-profit entity that is leased for a minimum of 99 years for the purpose of providing affordable housing; rent-restricted units within a newly constructed development that sets aside at least 70 units for affordable housing for households earning 120 percent of area median income or less; and property owners who dedicate units for affordable housing for households earning 60 percent of area median income or less, subject to approval of an ordinance by the county or municipality.

The bill has a significant fiscal impact on the state and local governments. See II. FISCAL ANALYSIS AND ECONOMIC IMPACT STATEMENT for further discussion.

This bill may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. See Section III.A.1 of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

AFFORDABLE HOUSING

Present Situation

Housing is considered affordable when it costs less than 30 percent of a family's gross income.¹ 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 governed by area median income (AMI) or statewide median family income,² published annually by the United States Department of Housing and Urban Development (HUD).³ The following are standard household income level definitions and their relationship to the 2022 Florida statewide AMI of \$78,300 for a family of four (as family size changes, the income range also varies):⁴

- Extremely low income – earning up to 30 percent AMI (at or below \$ 23,500);⁵
- Very low income – earning from 30.01 to 50 percent AMI (\$23,501 to \$39,150);⁶
- Low income – earning from 50.01 to 80 percent AMI (\$39,151 to \$62,650);⁷ and
- Moderate income – earning from 80.01 to 120 percent of AMI (\$62,651 to \$94,000).⁸

Florida Housing Finance Corporation⁹

The Florida Housing Finance Corporation (FHFC) was created in 1997 as a public-private entity to assist in providing a range of affordable housing opportunities for Floridians.¹⁰ FHFC is a corporation held by the state and housed within the Department of Economic Opportunity (DEO). FHFC is a separate budget entity and its operations are not subject to control, supervision, or direction by DEO.¹¹

The goal of 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, 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.¹²

¹ S. 420.0004(3), F.S.

² The 2022 Florida SMI for a family of four was \$79,300. U.S. Dept. of Housing and Urban Development, *Income Limits, Access Individual Income Limits Areas*, available at <https://www.huduser.gov/portal/datasets/il.html#2022> (last visited Feb. 20, 2023).

³ HUD User, Office of Policy Development and Research, "Income Limits," available at <https://www.huduser.gov/portal/datasets/il.html#2022> (last visited Feb. 20, 2023) (SMI and AMI available under the "Access Individual Income Limits Area" dataset).

⁴ U.S. Dept. of Housing and Urban Development, *Income Limits, Access Individual Income Limits Areas*, available at <https://www.huduser.gov/portal/datasets/il.html#2022> (last visited Jan. 25, 2023).

⁵ S. 420.0004(9), F.S.

⁶ S. 420.0004(17), F.S.

⁷ S. 420.0004(11), F.S.

⁸ S. 420.0004(12), F.S.

⁹ See generally National Council of State Housing Agencies, "About HFAs," available at <https://www.ncsha.org/about-us/about-hfas/> (last visited Feb. 20, 2023); See generally State of Florida Auditor General, "Florida Housing Finance Corporation Audit Performed Pursuant to Chapter 2013-83, Laws of Florida," available at https://flauditor.gov/pages/pdf_files/2017-047.pdf (last visited Feb. 20, 2023) (pursuant to Ch. 2013-83, Laws of Fla., codified as s. 420.511(5), F.S., the Florida Auditor General conducted an operational audit of the accounts and records of FHFC in November 2016).

¹⁰ Ch. 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.

¹¹ S. 420.504(1), F.S.

¹² See Fla. Housing Finance Corp., *About Florida Housing*, <https://www.floridahousing.org/about-florida-housing> (last accessed Feb. 28, 2023).

FHFC is governed by a board of directors composed of the Secretary of 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 from the following, subject to confirmation by the Senate:

- One member actively engaged in the residential home building industry;
- One member actively engaged in the banking or mortgage banking industry;
- One member who is a representative of those areas of labor engaged in home building;
- One member with experience in housing development who is an advocate for low-income persons;
- One member actively engaged in the commercial building industry;
- One member who is a former local government elected official; and
- Two citizens of the state who are not principally employed as members or representatives of any of the aforementioned groups.¹³

Members are appointed for four-year terms and vacancies are filled for the unexpired term.¹⁴ The Governor may suspend a member for cause, including failure to attend three meetings in a 12-month period, and suspended members are subject to removal or reinstatement by the Senate.¹⁵ Members receive no compensation for services, are entitled to necessary expenses, and must file full and public disclosure of financial interests.¹⁶

FHFC Homeownership Programs

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

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 homebuyers¹⁷ who meet income, purchase price and other program criteria; can qualify for a loan; and successfully complete a homebuyer education course.¹⁸ Borrowers who qualify for a first mortgage program may access one of FHFC's down payment assistance (DPA) programs.¹⁹

Down Payment Assistance

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,²⁰ to secure funding for down payments, closing costs, mortgage insurance premiums, or principal reduction to the first mortgage.²¹ 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

¹³ S. 420.504(3), F.S.

¹⁴ S. 420.504(4), F.S.

¹⁵ *Id.*

¹⁶ S. 420.504(6), (7), F.S.

¹⁷ 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 Feb. 24, 2023).

¹⁸ 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.

¹⁹ See Florida Housing Finance Corporation, *2020 Annual Report*, p. 13, available at <https://www.floridahousing.org/data-docs-reports/annual-reports> (last visited Feb. 24, 2023).

²⁰ A second mortgage is a subordinate mortgage made while the original is still in effect.

²¹ Only one FHFC DPA program can be used by a borrower.

(ranging up to 120 percent AMI), requirements (such as also having been approved for a first mortgage through FHFC), and terms (some including forgivable loans).

Hometown Heroes Program

In 2022, pursuant to the 2022 General Appropriations Act,²² FHFC created the Hometown Heroes Program, a new homeownership assistance program.²³ Under the program, eligible purchasers have access to zero-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 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).²⁴ The requirement to be a first-time homebuyer does not apply to those qualifying as servicemembers or veterans.

FHFC was appropriated \$100 million in 2022 to establish the Hometown Heroes Program.²⁵ As of January 16, 2023, the program has provided over \$49 million in assistance in 3,363 loans.

Funding for Affordable Housing

FHFC draws and administers funds from federal programs through federal tax credits and HUD²⁶ and from the state through the State Housing Trust Fund and Local Government Housing Trust Fund.²⁷ Both state trust funds are funded by documentary stamp taxes, 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.²⁸ 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.²⁹ Revenue collected from the documentary stamp tax is divided between the General Revenue Fund and various trust funds³⁰ according to the statutory formula in ch. 201, F.S.

Housing Trust Funds

The State Housing Trust Fund, administered by FHFC,³¹ 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.”³² The 1992

²² HB 5001, specific appropriation 2289 (2022 Reg. Session).

²³ Florida Housing Finance Corporation, *Florida Hometown Heroes Housing Program*, available at <https://www.floridahousing.org/programs/homebuyer-overview-page/hometown-heroes> (last visited Feb. 24, 2023).

²⁴ 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 (last visited Feb. 24, 2023).

²⁵ Ch. 2022-156, Laws of Fla (specific appropriation 2289).

²⁶ See ss. 420.507(33) and 159.608, F.S.

²⁷ S. 201.15, F.S.

²⁸ S. 201.02(1), F.S.

²⁹ Ss. 201.07 and 201.08, F.S.

³⁰ 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.

³¹ Ch. 92-317, ss. 1-35, Laws of Fla; s. 420.0005, F.S.

³² Ch. 88-376, s. 2, Laws of Fla.; s. 420.003(5), F.S. (1988).

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 FHFC,³³ 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.”³⁴ A certain proportion of documentary stamp tax revenues are distributed to the Local Government Housing Trust Fund.

SAIL Program

The SAIL program is administered by FHFC and provides low-interest loans on a competitive basis to multifamily affordable housing developers.³⁵ These funds often serve to bridge the gap between the development’s primary financing and the total cost of the development. SAIL program dollars are available for developers proposing to construct or substantially rehabilitate multifamily rental housing.³⁶

At a minimum, developments financed by the SAIL program 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 Credits³⁷ (LIHTC), 40 percent of units for households up to 60 percent of AMI.³⁸ Loan interest rates are set at 0 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 1 percent for all other developments. Generally, loans are issued for 15 years and cover approximately 25 to 35 percent of the total development cost.

Current law allows FHFC to prioritize a portion of SAIL program 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.³⁹ 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.

Development Funding Selection Process

SAIL program funding is distributed by FHFC through a competitive solicitation process.⁴⁰ Each year FHFC issues several requests for application, formal offers of funding that require aspirant developers to give FHFC detailed information related to the development. These requests for application vary by geography and the needs of the community, based on a statewide market study.⁴¹ Applications are then reviewed and scored by FHFC based on a number of criteria, and awards are made from the highest scoring applications.⁴²

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

³³ S. 420.9079, F.S.

³⁴ Ch. 92-317, s. 32, Laws of Fla.; s. 420.9072, F.S. (1992).

³⁵ S. 420.5087, F.S.

³⁶ See Florida Housing Finance Corporation, *State Apartment Incentive Loan*, available at <https://floridahousing.org/programs/developers-multifamily-programs/state-apartment-incentive-loan> (last visited Feb. 20, 2023).

³⁷ 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.

³⁸ S. 420.5087(2), F.S.

³⁹ S. 420.5087(10), F.S.

⁴⁰ S. 420.5087(1), F.S.

⁴¹ *Id.*, see also Fla. Admin. Code R. Ch. 67-60.

⁴² 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.

Internal Revenue Service (IRS), HUD, or other housing authority.⁴³ Both FHFC and local governments utilize LURAs to enforce requirements that developers receiving funding do go on to provide affordable housing.

The same competitive solicitation process is used to distribute many different types of funding routed through FHFC. FHFC is the state's administrator for all federal affordable housing programs, which include LIHTC, HOME Investment Partnerships Programs, the National Housing Trust Fund program through HUD, and Multifamily Mortgage Revenue Bonds. The process is also used for other state programs such as the Elderly Housing Community Loan Program.⁴⁴ Certain funding sources can also be paired to ensure a greater number of projects are funded.

External Funding

SAIL program 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:

- 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 type of financial instrument that are issued as tax credits through the LIHTC program.⁴⁵ After being allocated a certain amount of tax credits by the federal government based on population and need, FHFC allocates the funding to affordable housing developers. There are two types of credits:

- Nine percent credits, which are more valuable and limited. These are competitively bid and can typically fund two-thirds of a development's total cost.
- Four 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

Current law prescribes the distribution of revenues from the excise tax on documents.⁴⁶ After payments on certain outstanding bonds and a distribution to the Land Acquisition Trust Fund, 8 percent of total collections are deducted as the General Revenue service charge.⁴⁷ 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.⁴⁸

SHIP Program

The SHIP program was created in 1992⁴⁹ 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 Grant⁵⁰ entitlement cities on a population-based formula to finance and preserve affordable housing based on

⁴³ 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 Feb. 20, 2023).

⁴⁴ HB 627'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*, Jan. 30, 2022, available at https://issuu.com/fhfc/docs/2021_annual_report (last visited Feb. 20, 2023).

⁴⁵ Florida Housing Finance Corporation, *Housing Credits*, available at <https://www.floridahousing.org/programs/developers-multifamily-programs/low-income-housing-tax-credits> (last visited Feb. 20, 2023).

⁴⁶ S. 201.15, F.S.

⁴⁷ S. 215.20(1), F.S.

⁴⁸ S. 215.15, F.S.

⁴⁹ Ch. 92-317, Laws of Fla.

⁵⁰ The CDBG program is a federal program created in 1974 that provides funding for housing and community development activities.

locally adopted housing plans.⁵¹ The program was designed to serve very-low, low-, and moderate-income families and is administered by FHFC. SHIP program 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.⁵²

Funds are expended per each local government's adopted Local Housing Assistance Plan (LHAP), which details the housing strategies it will use.⁵³ Local governments submit their LHAPs to FHFC for review to ensure they meet the broad statutory guidelines and the requirements of the program rules. FHFC must approve an LHAP before a local government may receive SHIP program funding.

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 program funds must be reserved for construction, rehabilitation, or emergency repair of affordable, eligible housing;⁵⁴ and
- Up to 25 percent of SHIP program funds may be reserved for allowed rental services.⁵⁵

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

- At least 65 percent of SHIP program funds must be reserved for home ownership for eligible persons;⁵⁶
- At least 20 percent of SHIP program funds must serve persons with special needs;⁵⁷
- Up to 20 percent of SHIP program funds may be used for manufactured housing;⁵⁸ and
- At least 30 percent of SHIP program 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.⁵⁹

Effect of Proposed Changes

Funding for Affordable Housing

The bill redirects up to \$150 million from the General Revenue service charge to the State Housing Trust Fund for use in the SAIL program. The bill provides that after documentary stamp tax revenue is distributed to the Land Acquisition Trust Fund, the State Housing Trust Fund must receive the lesser of 8 percent of the remainder or \$150 million. If 8 percent of the remainder is greater than \$150 million, the bill requires the amount in excess to be paid into the General Revenue Fund.

The bill provides specific directions for the use of the diverted funds. FHFC must use 70 percent of the funds to issue competitive requests for application to finance projects that:

- Redevelop an existing affordable housing development while also allowing for the construction of a new development within close proximity to the existing development to be rehabilitated. This process entails first constructing a new affordable housing development, then relocating the tenants from the existing development to the new development, and finally demolishing the

⁵¹ See ss. 420.907-420.9089, F.S.

⁵² S. 420.072(7), F.S.

⁵³ Sections 420.9075 and 420.9075(3), F.S., outline 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.

⁵⁴ S. 420.9075(5)(c), F.S.

⁵⁵ S. 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.

⁵⁶ S. 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.

⁵⁷ S. 420.9075(5)(d), F.S.

⁵⁸ S. 420.9075(5)(e), F.S.

⁵⁹ S. 420.9075(5)(g)2., F.S.

existing development to allow for reconstruction of an affordable housing development with more overall units 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; or
- Provide housing near military installations in this state.

The remaining 30 percent must be used to finance projects that:

- 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; or
- Provide housing to meet the needs in areas of rural opportunity.

The bill instructs FHFC to coordinate with the appropriate state department or agency for each goal, and to prioritize projects that provide for mixed-income developments. The bill provides that for any allocated funds remaining at the end of a given fiscal year, those funds may be used to supplement future applications for the same types of projects.

The bill provides that these provisions expire June 30, 2033, unless otherwise acted upon by the Legislature.

SAIL Program – Developments for Those in Foster Care or Those Aging out of Foster Care

The bill removes 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 FHFC can fund.

Florida Hometown Hero Program

The bill codifies the Florida Hometown Hero Program and revises the program by:

- Removing occupational qualifiers, opening the program to all Florida residents employed full-time (35 hours or more per week) by a Florida-based employer.
- Increasing the maximum amount available per loan from \$25,000 to \$35,000, while maintaining the cap of 5 percent of purchase price.
- Specifying that loans made under this program may be used for the purchase of manufactured homes⁶⁰ that were constructed after July 13, 1994, whether titled and financed as tangible personal property or real property, so long as the manufactured home is permanently affixed to real property in this state. The real property can be leased or owned by the borrower.

Florida Housing Finance Corporation

Board of Directors

The bill provides 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 must be filled by the appointee who made the original member’s appointment.

Legislative Budget Request

FHFC prepares and submits an annual legislative budget request to the Secretary of DEO containing a request for operational expenditures and a separate request for other authorized corporation

⁶⁰ As defined by s. 320.01(2)(b).

programs.⁶¹ The bill requires the FHFC legislative budget request to 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.

The bill provides that this provision expires July 1, 2033, unless otherwise acted upon by the Legislature.

STATE HOUSING STRATEGY ACT

Present Situation

The State Housing Strategy Act was created by the Legislature in 1992 to guarantee adequate affordable housing for Florida residents.⁶² The State Housing Strategy suggests the goal of assuring that by the year 2010 each Floridian must 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. These goals have 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, DEO and FHFC annually coordinate with the Shimberg Center for Housing Studies at the University of Florida⁶³ to develop and maintain statewide data on affordable housing needs for specific populations.⁶⁴ These studies are then used to review and evaluate existing affordable housing accommodations to ensure they are consistent with current needs assessments and to recommend any improvements or plan modifications.⁶⁵

Effect of Proposed Changes

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

The bill also establishes the following 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 publicly 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.

⁶¹ S. 420.507(30), F.S.

⁶² S. 420.0003, F.S.

⁶³ 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 . 24, 2023).

⁶⁴ S. 420.0003(4)(c), F.S.

⁶⁵ *Id.*

- *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.

Finally, the bill provides for implementation of the State Housing Strategy much of which is largely maintained from the original State Housing Strategy, but incorporates 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 the Office of Program Policy Analysis and Government Accountability. The reports, which will be conducted on a rotating basis, 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.

LOCAL GOVERNMENTS

Present Situation

Local Governments and Affordable Housing Development

Consistency with Comprehensive Plans

All development, both public and private, and all development orders⁶⁶ approved by local governments must be consistent with the local government's comprehensive plan.⁶⁷ The Growth Management Act requires every city and county to create and implement a comprehensive plan to guide future development.⁶⁸ 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 regulations for a different facet of development.⁶⁹ The Future Land Use Element and the Housing Element are the most pertinent to the bill.

- 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.⁷⁰ The approximate acreage and the general range of density or intensity of use must be provided for each land use category.⁷¹
- 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.⁷²

⁶⁶ "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.

⁶⁷ S. 163.3194(3), F.S.

⁶⁸ S. 163.3167(2), F.S.

⁶⁹ S. 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.

⁷⁰ S. 163.3177(6)(a), F.S.

⁷¹ S. 163.3177(6)(a), F.S.

⁷² S. 163.3177(6)(f), F.S.

A comprehensive plan is implemented through the adoption of land development regulations⁷³ that are consistent with the plan, and which contain specific and detailed provisions necessary to implement the plan.⁷⁴ 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.⁷⁵ Substantially affected persons have the right to maintain administrative actions that ensure land development regulations implement and are consistent with the comprehensive plan.⁷⁶

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.⁷⁷ Following the hearings, the local government must transmit the plan to several statutorily identified reviewing agencies, including DEO, for review.⁷⁸ 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.⁷⁹

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.⁸⁰

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.⁸¹ Common regulations within the zoning map districts include density,⁸² height and bulk of buildings, setbacks, and parking requirements.⁸³ 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.⁸⁴ 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

⁷³ "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.

⁷⁴ S. 163.3202, F.S.

⁷⁵ *Id.*

⁷⁶ S. 163.3213, F.S.

⁷⁷ Ss. 163.3174(4)(a) and 163.3184, F.S.

⁷⁸ S. 163.3184, F.S.

⁷⁹ 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 <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 Feb. 26, 2023).

⁸⁰ 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).

⁸¹ Indian River County, General Zoning Questions, available at <https://www.ircgov.com/communitydevelopment/planning/FAQ.htm#zoning1> (last visited Feb. 26, 2023)

⁸² "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.

⁸³ *Supra* note 126.

⁸⁴ City of Tallahassee, Application For Rezoning Review, available at <https://www.talgov.com/Uploads/Public/Documents/place/zoning/cityrezinfsh.pdf> (last visited Feb. 27, 2023)

size or setback through an application for a variance.⁸⁵ 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:⁸⁶

- If the area affected is less than 10 acres, the local government must notify by mail each property owner and hold a public meeting to discuss the ordinance or resolution before passage.⁸⁷
- If the area affected is 10 acres or greater, the local government must hold two separate meetings to discuss the changes, and notice the public through either mail to each property owner or to the public generally by newspaper.⁸⁸

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.⁸⁹ 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 FHFC's SAIL program.⁹⁰

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.

Rent Control

Counties and municipalities are permitted to pass rent control ordinances under specific circumstances.⁹¹ 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."⁹² 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.⁹³

Keys Workforce Housing Initiative

The Florida Keys Area Protection Act⁹⁴ 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."⁹⁵ Monroe County, applicable municipalities, and DEO have agreed to use a multi-phase evacuation model and limit residential building permits going forward in order to comply with these standards.⁹⁶

⁸⁵ See e.g., City of Tallahassee, Variance and Appeals, available at https://www.talgov.com/Uploads/Public/Documents/growth/forms/boaa_variance.pdf (last visited Feb. 27, 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.shtml> (last visited Feb. 27, 2023)

⁸⁶ See ss. 125.66(4) and 166.041(3), F.S.

⁸⁷ *Id.*

⁸⁸ See ss. 125.66(4) and 166.041(3), F.S.

⁸⁹ Ss. 125.01055(6) and 166.04151(6), F.S.

⁹⁰ *Id.*

⁹¹ Ss. 125.0103 and 166.043, F.S.

⁹² *Id.*

⁹³ Ss. 125.0103 and 166.043, F.S.

⁹⁴ S. 380.0552, F.S.

⁹⁵ *Id.* at (9)(e)2.

⁹⁶ See *Mattino v. City of Marathon*, 345 So.3d 939 (Fla. 3d DCA 2022), for detailed background on this section.

In response to need for affordable housing, 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 making landfall.⁹⁷

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 was not in compliance with state law.⁹⁸

Effect of Proposed Changes

Local Governments and Affordable Housing Development

For certain multi-family rental developments in commercial, industrial, and mixed-use areas, the bill preempts counties on zoning, density, and height.⁹⁹ Specifically, a county must authorize multifamily and qualifying mixed-use residential developments¹⁰⁰ as allowable uses in any area zoned for commercial, industrial, 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 percent AMI. A county may not require a zoning, land use change, special exception, conditional use approval, variance, or a comprehensive plan amendment for such development.

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 may not require further action from the board of county commissioners if the development satisfies the county’s land development regulations for multifamily developments in areas zoned for such use and is consistent with the comprehensive plan, except for those elements preempted by the bill. A county must consider reducing parking requirements for these developments if they are located within one-half mile of a major transit stop as defined in the county’s land development code.

The bill makes identical changes as applied to municipalities.

These provisions expire on October 1, 2033.

Expedited Development Projects for Affordable Housing

The bill removes a county’s ability to approve affordable housing on residential parcels where state law and local ordinance may otherwise preclude such development. The bill also removes the SAIL program restriction to allow SAIL program developments to utilize this expedited approval process on commercial and industrial parcels.

The bill makes identical changes as applied to municipalities.

⁹⁷ 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).

⁹⁸ *Id.* at 943-46.

⁹⁹ These preemptions do not apply in any area zoned as industrial that is defined as a residential and commercial working waterfront under s. 342.201(2)(b), F.S.

¹⁰⁰ For a mixed-use residential project to qualify for the provisions of this section, at least 65 percent of the total square footage must be used for residential purposes.

Expedited Building Permits

The bill requires a local government to 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.

Rent Control

The bill preempts local governments from enacting ordinances controlling the price of rent under any circumstances.

Keys Workforce Housing Initiative

The bill contains an uncodified provision that states the Initiative is an exception to the evacuation time constraints of the Florida Keys Protection Act. Instead, deed-restricted affordable workforce housing properties receiving permit allocations under the Initiative must agree to evacuate at least 48 hours in advance of hurricane landfall. The bill provides that the comprehensive plan amendment approved by DEO to implement the Initiative is valid and authorizes the respective local government to adopt ordinances or regulations to implement the plan amendment.

TAXATION AND TAX CREDITS

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.¹⁰¹ The property appraiser annually determines the “just value”¹⁰² of property within the taxing jurisdiction and then applies relevant exclusions, assessment limitations, and exemptions to determine the property’s “taxable value.”¹⁰³ 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,¹⁰⁴ and it limits the Legislature’s authority to provide for property valuations at less than just value, unless expressly authorized.¹⁰⁵

The just valuation standard generally requires the property appraiser to consider the highest and best use of property;¹⁰⁶ 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, land producing high water recharge to Florida’s aquifers, land used exclusively for noncommercial recreational purposes,¹⁰⁷

¹⁰¹ Both real property and tangible personal property are subject to tax. S. 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. S. 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.

¹⁰² 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); *Deltora Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

¹⁰³ See s. 192.001(2) and (16), F.S.

¹⁰⁴ FLA. CONST. art. VII, s. 1(a).

¹⁰⁵ See FLA. CONST. art. VII, s. 4.

¹⁰⁶ S. 193.011(2), F.S.

¹⁰⁷ FLA. CONST. art. VII, s. 4(a).

land used for conservation purposes,¹⁰⁸ historic properties when authorized by the county or municipality,¹⁰⁹ and certain working waterfront property.¹¹⁰

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.¹¹¹ The Legislature has implemented these exemptions and set forth criteria to determine whether property is entitled to an exemption.¹¹²

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.¹¹³

Incidental use of property for an exempt purpose does not qualify the property for an exemption nor does the incidental use of the property for a non-exempt purpose impair an exemption.¹¹⁴

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.¹¹⁵

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 non-profit corporation that provides affordable housing.¹¹⁶ The exemption is limited to only those portions of the property that house persons or families whose income does not exceed 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 FHFC containing more than 70 units used to 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.¹¹⁷ In 2021, the Legislature increased the 50 percent discount to a full exemption.¹¹⁸

¹⁰⁸ FLA. CONST. art. VII, s. 4(b).

¹⁰⁹ FLA. CONST. art. VII, s. 4(e).

¹¹⁰ FLA. CONST. art. VII, s. 4(j).

¹¹¹ FLA. CONST. art. VII, s. 3(a).

¹¹² S. 196.196, F.S.

¹¹³ S. 196.196(1), F.S.

¹¹⁴ S. 196.196(2), F.S. See also *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) and *Central Baptist Church of Miami, Florida Incorporated v. Dade County, Florida, et al.*, 216 So.2d 4, 6 (Fla. 1968) (Florida 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.")

¹¹⁵ See s. 196.196(4), F.S.

¹¹⁶ Chapter 99-378, s. 15, Laws of Fla. (creating s. 196.1978, F.S., effective July 1, 1999). 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).

¹¹⁷ S. 196.1978(2)(a), F.S. (2018) and ch. 2017-36, s. 6, Laws of Fla.

¹¹⁸ See ch. 2021-31, s. 10, Laws of Fla.

Sales Tax

Florida levies 6 percent sales and use tax on the sale or rental of most tangible personal property,¹¹⁹ admissions,¹²⁰ transient rentals,¹²¹ and a limited number of services. Chapter 212, 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.¹²²

Tax Credit Programs

The Florida Tax Credit Scholarship Program (FTC) was created in 2001¹²³ and allows taxpayers to make private, voluntary contributions to scholarship-funding organizations 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.¹²⁴ The tax credit is equal to 100 percent of the eligible contributions made.¹²⁵ To receive a tax credit, the taxpayer must submit an application to DOR and specify each tax for which the taxpayer requests a credit and the applicable taxable or state fiscal year for the credit.¹²⁶ Taxpayers can rescind tax credits, which will become available to another eligible taxpayer in that fiscal year.¹²⁷

Low Income Housing Tax Credits

Of the affordable housing financing options provided by the federal government, LIHTC¹²⁸ 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.¹²⁹ This 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 FHFC seek a purchaser who will continue to operate the affordable portions of the development as affordable housing, which is referred to as the "qualified contract process." Many developments, particularly those that 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 one-year period, the extended use period of the property as affordable housing will end, and the property can be utilized for market-rate housing.¹³⁰

This "qualified contract process" relies on FHFC marketing the property and returning to the owner with a "bona fide contract," showing that it has 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

¹¹⁹ S. 212.05(1)(a)1.a., F.S.

¹²⁰ S. 212.04(1)(b), F.S.

¹²¹ S. 212.03(1)(a), F.S.

¹²² S. 212.07(2), F.S.

¹²³ S. 1002.395, F.S.

¹²⁴ S. 1002.395(1) and (5), F.S.

¹²⁵ Ss. 220.1875 and 1002.395(5), F.S.

¹²⁶ S. 1002.395(5)(b), F.S.

¹²⁷ S. 1002.395(5)(e), F.S.

¹²⁸ 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.

¹²⁹ Internal Revenue Code Section 42(h)(6)(A).

¹³⁰ Internal Revenue Code Section 42(h)(6)(E)(i)(II).

designed to give the owner an inflation adjusted return on its original equity contribution.¹³¹ 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.¹³²

If FHFC is able to secure a purchaser and present the owner with 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 continues to be subject to its extended use agreement as affordable housing.¹³³ If the owner accepts the offer, the property is sold to the purchaser. If the owner rejects the offer or fails to act upon the offer, the owner continues 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.¹³⁴ 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.

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.¹³⁵ Broadly, the CCTCP offers tax credits to businesses or persons ("taxpayers") anywhere in Florida that contribute¹³⁶ to certain projects undertaken by approved CCTCP sponsors.¹³⁷ Eligible projects include activities undertaken by an eligible sponsor that are designed to:

- Construct, improve, or substantially rehabilitate housing that is affordable to low-income households or very-low-income households;¹³⁸
- Provide commercial, industrial, or public resources and facilities; or
- Improve entrepreneurial and job-development opportunities for low-income persons.¹³⁹

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 FHFC and other statewide and regional housing and financial intermediaries.¹⁴⁰ Once approved by DEO, the taxpayer must claim the community contribution tax credit from 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.¹⁴¹ The taxpayer may use the credit against corporate income tax, insurance premium tax, or as a refund against sales tax.¹⁴² Unused credits

¹³¹ Internal Revenue Code Section 42(h)(6)(F).

¹³² Fla. Admin. Code R. 67-48.031.

¹³³ Fla. Admin. Code R. 67-48.031(11).

¹³⁴ Ch. 2022-194, s. 1, Laws of Fla.

¹³⁵ Ch. 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.

¹³⁶ Ss. 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.

¹³⁷ Ss. 212.08(5)(p); 220.183; and 624.5105, F.S.

¹³⁸ As defined in s. 420.9071

¹³⁹ Ss. 212.08(5)(p)2.b.; 220.183(2)(d); 624.5105(2)(b); and 220.03(1)(t), F.S.

¹⁴⁰ Ss. 212.08(5)(p)4.; 220.183(4); and 624.5105(4), F.S.

¹⁴¹ Ss. 212.08(5)(p)1.; 220.183 (1)(a) and (b); and 624.5105(1), F.S.

¹⁴² Ss. 212.08(5)(p); 220.183; and 624.5105, F.S.

against corporate income taxes and insurance premium taxes may be carried forward for five years.¹⁴³ Unused credits against sales taxes may be carried forward for three years.¹⁴⁴

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.¹⁴⁵ The Legislature extended the CCTCP in 1984, 1994, 2005, 2014, and 2015,¹⁴⁶ and made the program permanent in 2017.¹⁴⁷ The Legislature also amended the annual tax credit allocation of the CCTCP on several occasions.¹⁴⁸ Each time the allocation was increased, the number of projects increased to match the larger allocation.

Effect of Proposed Changes

Ad Valorem Taxation

The bill includes three new property tax exemptions:

Nonprofit Land Lease Exemption

The bill provides 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

The bill provides a new ad valorem tax exemption for certain property used to provide affordable housing.

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 five 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.

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 FHFC. To receive a FHFC certification, a property

¹⁴³ Ss. 220.183(1)(e) and (g); and 624.5105, F.S.

¹⁴⁴ Ss. 212.08(5)(p)1.b. and f., F.S.

¹⁴⁵ “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. S. 420.0004(13), F.S.

¹⁴⁶ Chs. 84-356, 94-136, 2005-282, 2014-38, and 2015-221, Laws of Fla.

¹⁴⁷ Ch. 2017-36, Laws of Fla.

¹⁴⁸ Chs. 94-136, 98-219, 99-265, 2005-282, 2006-78, 2008-153, 2015-221, and 2017-36, Laws of Fla.

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 three 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 three years to provide affordable housing.

The certification process is administered within FHFC and its responsibilities include publishing the deadline for submission, reviewing each request, sending certification notices to both the successful property owner and appropriate property appraiser, and 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 FHFC under ch. 420, F.S., to provide affordable housing, and property receiving an exemption under s. 196.1979, F.S.,¹⁴⁹ are not eligible to receive this exemption.

The bill provides 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

The bill authorizes the governing body of a county or municipality to enact 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- limit¹⁵⁰ or with incomes between 30 to 60 percent of AMI, 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 extremely-low-income (up to 30 percent AMI) and for incomes between 30 to 60 percent AMI targets. 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 the property as having met the requirements for the exemption, and to notify unsuccessful applicants with the reasons for denial;

¹⁴⁹ Section 9 of the bill creates s. 196.1979, F.S.

¹⁵⁰ S. 420.0004(9), F.S.

- 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.

Florida Sales Tax Refund for SAIL Program Developments

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 sales of building materials before July 1, 2023.

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

- 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, including their cost and sales tax;
- A certification by the building code inspector that the unit is substantially completed; and
- A copy of the LURA with 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 the SHIP program. In this case, the local government, agency, or organization would make the same request as described above.

DOR may adopt rules to implement these directives.

Live Local Program

The bill establishes the "Live Local Program," a tax credit program benefiting the SAIL program.

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

FHFC must expend all of the contributions received under the Live Local Program for the SAIL program. From the amount received, 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. These loans 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. FHFC must find that the 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 DOR

Taxpayers that wish to participate in the program by donating to the initiative must apply to 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 and the applicable taxable year for a credit regarding corporate income tax¹⁵¹ or insurance premium taxes.¹⁵² DOR must approve the tax credits on a first-come, first-served basis.

Any unused credit may be carried forward up to 10 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 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 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 DOR if the taxpayer receives notice that the rescindment has been accepted.

The bill allows DOR and FHFC to develop a cooperative agreement to assist in the administration of the program and authorizes DOR to adopt rules. Additionally, the bill requires 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.

LIHTC Qualified Contracts

The bill provides that the FHFC must 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.

Community Contribution Tax Credit Program

The bill increases 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 from \$14.5 million to \$25 million, starting in Fiscal Year (FY) 2023-2024.

GOVERNMENT-OWNED LANDS

Present Situation

State-owned Lands

¹⁵¹ S. 220.1878

¹⁵² S. 624.51058, F.S.

All lands held by the Board of Trustees of the Internal Improvement Trust Fund¹⁵³ (board) must be held in trust for the use and benefit of the people of the state.¹⁵⁴ Each manager of non-conservation lands¹⁵⁵ must submit to the Division of State Lands within the Department of Environmental Protection a land use plan at least every 10 years in a form and manner prescribed by rule by the board.¹⁵⁶ All land use plans, whether for single-use or multiple-use properties, must include an analysis of the property to determine the potential use of private land managers to facilitate the restoration or management of these lands.¹⁵⁷

The board determines which lands it holds title to may be surplus.¹⁵⁸ 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.¹⁵⁹ 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.¹⁶⁰

If the board determines that non-conservation lands are no longer needed, it may dispose of such surplus lands by vote.¹⁶¹ Requests for surplus lands may be made by any public or private entity or person.¹⁶² County or local government requests for surplus lands through purchase or exchange are expedited throughout the surplus process.¹⁶³ The board must consider such requests within 90 days of the board's receipt of the request.¹⁶⁴ Surplus lands conveyed to a local government for affordable housing must be disposed of by the local government.¹⁶⁵

Property Owned by Local Governments

Since 2006, counties and municipalities have been required to prepare an inventory of publicly owned real property that would be appropriate for use as affordable housing, and update the inventory every three years.¹⁶⁶ 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.¹⁶⁷

Effect of Proposed Changes

State-owned Lands

¹⁵³ 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.

¹⁵⁴ S. 253.001, F.S.

¹⁵⁵ "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 non-conservation lands.

¹⁵⁶ S. 253.034(5), F.S.

¹⁵⁷ *Id.*

¹⁵⁸ S. 253.0341, F.S.

¹⁵⁹ FLA. CONST. art. X, s. 18.

¹⁶⁰ S. 253.0341, F.S.

¹⁶¹ S. 253.0341(1), F.S.

¹⁶² S. 253.0341(11), F.S.

¹⁶³ S. 253.0341(1), F.S.

¹⁶⁴ S. 253.0341(10), F.S.

¹⁶⁵ S. 125.379, F.S., or s. 166.0451, F.S.

¹⁶⁶ Ss. 125.379 and 166.0451, F.S.

¹⁶⁷ *Id.*

The bill provides that a land use plan submitted for non-conservation lands must include an analysis of whether such lands would be more appropriately transferred to a local government for affordable housing related purposes. The bill clarifies that local government requests for surplus lands are expedited throughout the process regardless of the means of transfer, to include donation.

Property Owned by Local Governments

The bill requires counties and municipalities to produce their real property inventory lists by October 1, 2023, and every three years thereafter, and make such list available on the county or municipal website. Counties and municipalities must 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.

The bill includes certain best practices counties and municipalities 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.

The bill authorizes FHFC to contract with the Florida Housing Coalition, Florida's provider for statewide training and technical assistance funded by the Catalyst Program,¹⁶⁸ to aid local governments related to surplus lands programs and executing contracts related to bidding for affordable housing projects and land-lease developments.

JOB GROWTH GRANT FUND

Present Situation

The Florida Job Growth Grant Fund, created by the Legislature in 2017, is an economic development program within DEO designed to promote public infrastructure and workforce training across the state.¹⁶⁹ Eligible projects include state or local public infrastructure projects to promote economic recovery, rehabilitation of the Herbert Hoover Dike, and workforce training grants that support college and technical center workforce skills programs. Proposals are reviewed by 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 to which they are awarded.¹⁷⁰ DEO must administer contracts for projects approved by the Governor and funded through this program.¹⁷¹

Effect of Proposed Changes

The bill authorizes the use of Job Growth Grant Fund money for public infrastructure projects that support affordable housing. This provision will expire in 2033.

B. SECTION DIRECTORY:

Section 1: Provides the bill may be cited as the "Live Local Act."

Section 2: Amends s. 125.0103 F.S., relating to county price control ordinances.

Section 3: Amends s. 125.01055, F.S., relating to county regulation of affordable housing

¹⁶⁸ S. 420.531, F.S.

¹⁶⁹ S. 288.101, F.S.

¹⁷⁰ S. 288.101(2), F.S.

¹⁷¹ S. 288.101(4), F.S.

developments.

- Section 4: Amends s. 125.379, F.S., relating to disposition of county property for affordable housing.
- Section 5: Amends s. 166.04151, F.S., relating to municipal regulation of affordable housing developments.
- Section 6: Amends s. 166.043, F.S., relating to municipal price control ordinances.
- Section 7: Amends s. 166.0451, F.S., relating to disposition of municipal property for affordable housing.
- Section 8: Amends s. 196.1978, F.S., relating to affordable housing property exemptions
- Section 9: Creates s. 196.1979, F.S., relating to county and municipal affordable housing property exemptions.
- Section 10: Amends s. 201.15, F.S., relating to the distribution of documentary stamp tax revenues.
- Section 11: Provides that the amendments made to s. 201.15, F.S., by the bill expire on July 1, 2033, and the text of that section revert to that in existence before the bill's passage, but for unrelated amendments by other later legislation.
- Section 12: Amends s. 212.08, F.S., relating to sales, rental, use, consumption, distribution, and storage tax and specified exemptions.
- Section 13: Amends s. 213.053, F.S., relating to confidentiality and information sharing.
- Section 14: Creates s. 215.212, F.S., relating to service charge elimination.
- Section 15: Amends s. 215.22, F.S., to make conforming changes.
- Section 16: Provides that the amendments made to s. 215.22, F.S., by the bill on July 1, 2033, and the text of that section revert to that in existence before the bill's passage, but for unrelated amendments by other later legislation.
- Section 17: Amends s. 220.02, F.S., to make conforming changes.
- Section 18: Amends s. 220.13, F.S., to make conforming changes.
- Section 19: Amends s. 220.183, F.S., relating to the community contribution tax credit.
- Section 20: Amends s. 220.186, F.S., to make conforming changes.
- Section 21: Creates s. 220.1878, F.S., relating to corporate income tax credits for contributions to the Live Local Program.
- Section 22: Amends s. 220.222, F.S., to make conforming changes.
- Section 23: Amends s. 253.034, F.S., relating to state-owned lands.
- Section 24: Amends s. 253.0341, F.S., relating to surplus of state-owned lands.
- Section 25: Amends s. 288.101, F.S., relating to the Florida Job Growth Grant Fund.
- Section 26: Amends s. 420.003, F.S., relating to state housing strategy.

- Section 27: Amends s. 420.503, F.S., relating to definitions concerning FHFC.
- Section 28: Amends s. 420.504, F.S., relating to membership of the FHFC board.
- Section 29: Amends s. 420.507, F.S., relating to powers of FHFC.
- Section 30: Provides that the amendments made to s. 420.507, F.S., by the bill on July 1, 2033, and the text of that section revert to that in existence before the bill's passage, but for unrelated amendments by other later legislation.
- Section 31: Amends s. 420.5087, F.S., relating to the State Apartment Loan Program.
- Section 32: Creates s. 420.50871, F.S., relating to the allocation of increase revenues derived from amendments to s. 201.15, F.S., made by the bill.
- Section 33: Directs the Division of Law Revision to replace the phrase "this act" in the newly created s. 420.50871, F.S., with the assigned chapter law number of the bill.
- Section 34: Creates s. 420.50872, F.S., relating to the Live Local Program.
- Section 35: Creates s. 420.5096, F.S., relating to the Florida Hometown Hero Program.
- Section 36: Amends s. 420.531, F.S., relating to the Affordable Housing Catalyst Program.
- Section 37: Amends s. 420.6075, F.S., relating to research and planning for affordable housing.
- Section 38: Amends s. 553.792, F.S., relating to building permit applications to local governments.
- Section 39: Amends s. 624.509, F.S., to make conforming changes.
- Section 40: Amends s. 624.5105, F.S., to make conforming changes.
- Section 41: Creates s. 624.51058, F.S., related to insurance premium tax credits for contributions to the Live Local Program.
- Section 42: Creates an uncodified section of law related to the Keys Workforce Housing Initiative.
- Section 43: Grants DOR emergency rulemaking authority as it relates to administering the Live Local Program created by the bill.
- Section 44: Provides \$100 million in nonrecurring funds from the General Revenue Fund to FHFC to implement the Florida Hometown Hero Housing Program.
- Section 45: Provides \$252 million in nonrecurring funds from the Local Government Housing Trust Fund in the Grants and Aids – Housing Finance Corporation (HFC) – SHIP Program category to FHFC.
- Section 46: Provides \$150 million in recurring funds and \$109 million in nonrecurring funds from the State Housing Trust Fund in the Grants and Aids – Housing Finance Corporation (HFC) – Affordable Housing Programs category to FHFC.
- Section 47: Provides \$100 million in nonrecurring funds from the General Revenue Fund to FHFC to implement a competitive assistance loan program for new construction projects in the development pipeline that have not commenced construction and are experiencing verifiable cost increases due to market inflation.

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

Section 49: Provides that, except as otherwise expressly provided in the bill and except for this section, the bill will take effect July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Affordable housing developers may see reduced costs to the extent they are eligible for tax credits created or expanded by the bill.

Individuals may benefit to the extent the bill increases the availability of affordable housing units, increases the total supply of housing units, and provides assistance with down payments for eligible residents.

D. FISCAL COMMENTS:

The Revenue Estimating Conference estimated revenue impacts for the following provisions of the bill:

- The sales tax refund for building materials will have an impact in FY 2023-24 on:
 - General Revenue of -\$32.2 million cash; -\$35.1 million recurring;
 - State Trust Fund revenue of negative insignificant cash and recurring; and
 - Local government revenues of -\$8.6 million cash; -\$9.4 million recurring.
- Increasing the Community Contribution Tax Credit cap will have an impact in FY 2023-24 on:
 - General Revenue of -\$8.4 million cash and recurring;
 - State Trust Fund revenue of negative insignificant cash and recurring; and
 - Local government revenue of -\$2.1 million cash and recurring.
- The Live Local Program tax credits will have an impact in FY 2023-34 on General Revenue of -\$50 million cash; -\$100 million recurring.
- The property tax exemption for certain lands leased for affordable housing will have an impact in FY 2023-24 on local government revenues of zero cash; -\$8.5 million recurring (-\$3.0 million school taxes; -\$5.4 million non-school taxes).
- The General Revenue service charge redirect will have an impact in FY 2023-24 on:
 - General Revenue of -\$150 million cash and recurring; and
 - State Trust Fund revenue of \$150 million cash and recurring.

The Revenue Estimating Conference has not estimated the potential revenue impacts of the provisions of the bill providing a property tax exemption for newly constructed or substantially renovated

multifamily rental units or for the provision creating a local option affordable housing property tax exemption.

Local governments may incur expenditures 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.

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.¹⁷²

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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 municipalities 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.

2. Other:

None.

¹⁷² 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 March 18, 2023). This provision takes effect upon the bill becoming a law.

B. RULE-MAKING AUTHORITY:

The bill provides grants of rulemaking authority. It authorizes:

- FHFC to adopt rules to implement provisions relating to the exemption for newly-constructed affordable housing units.
- DOR to adopt rules governing the manner and format of refund applications for sales tax paid on building materials used to construct an affordable housing unit funded through FHFC and to establish guidelines as to the requisites for an affirmative showing of qualification for the exemption.
- DOR to adopt rules necessary to administer the Live Local Program, including rules establishing application forms, procedures governing the approval of tax credits and carryforward tax credits, and procedures to be followed by taxpayers when claiming approved tax credits on their returns.
- DOR to adopt emergency rules for the purpose of implementing provisions of the Live Local Program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 3, 2023 the State Affairs Committee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed in that it:

- Prohibits local governments from requiring a zoning, land use, special exception, conditional use approval, variance, or comprehensive plan change related to building height, zoning, or density for any multi-family or mixed-use development if at least 40 percent of the residential units are reserved for affordable housing for at least 30 years.
- Requires administrative approval of developments to be consistent with the comprehensive plan.
- Requires local government to consider reduced parking requirements if the development is within half a mile of a major transit stop.
- Provides a tax exemption for units constructed within the last five years in market rate developments that are dedicated for tenants in certain AMI ranges of 100 percent tax exemption for units reserved for tenants with up to 80 percent of local AMI, and 75 percent tax exemption for units reserved for tenants between 81 and 120 percent of local AMI.
- Authorizes local governments to adopt an ordinance providing a property tax exemption for units dedicated for tenants with incomes at 60 percent of local AMI or below.
- Authorizes local governments to deny or revoke exemption based on the history of code enforcement violations or failure to pay fines or charges related to code enforcement violations.
- Authorizes DOR to create an application form for tax exemption.
- Provides a refund of up to \$5,000 per affordable housing unit for sales tax paid on building materials used in construction of developments funded through FHFC deals.
- Provides that the building materials sales tax refund applies to purchases of building materials on or after July 1, 2023.
- Authorizes up to \$25 million per year to be used to provide loans for large-scale projects of significant regional impact under the Live Local corporate tax donation program.
- Authorizes DOR to share information with FHFC for the purpose of administering the Live Local program.
- Provides that Live Local Tax Credit payments are to be considered when calculating corporate income tax underpayment.
- Creates an exception to evacuation time constraints for certain deed-restricted affordable workforce housing properties to agree to evacuate at least 48 hours in advance of hurricane landfall.
- Validates a comprehensive plan amendment approved by DEO to implement the initiative and authorizes local governments to adopt ordinances or regulations to implement the plan amendment.

On March 20, 2023, the Ways & Means Committee adopted two amendments and reported the bill favorably as a committee substitute. The amendments differed from the bill as presented in committee in that they:

- Applied the local zoning preemption provisions to industrial property in addition to commercial and mixed-use properties, other than industrial property located in an area defined as recreational and commercial working waterfront.
- Limited the use of Hometown Hero Program funds for manufactured homes to only manufactured homes affixed to real property in this state.

This analysis is drafted to the bill as amended by the Ways & Means Committee.