

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CMAS 11-02 Affordable Housing
SPONSOR(S): Community & Military Affairs Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:** SB 176

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Community & Military Affairs Subcommittee		Duncan	Hoagland

SUMMARY ANALYSIS

This bill reenacts portions of existing law most closely related to affordable housing amended by ch. 2009-96, Laws of Florida, (Committee Substitute for Committee Substitute for Senate Bill 360) passed by the Legislature in 2009. Since that time, the law has been the subject of ongoing litigation regarding its constitutionality. This litigation has created uncertainty among local governments, developers, and private interests regarding the provisions of law amended by CS/CS/SB 360.

This bill does not change current law, but simply reenacts the affordable housing portions of the existing law that were amended by CS/CS/SB 360, in an effort to remove uncertainty and address alleged constitutional defects relating to the single subject requirement in Article III, section 6, of the Florida Constitution.

This bill reenacts several statutory provisions that:

- Revise the state's affordable housing homeownership and rental programs.
- Address foreclosure issues under the State Housing Initiatives Partnership Program.
- Reduce tax burdens for those living in, or providing for, affordable housing.
- Assist special populations with meeting housing needs.

See the "Current Situation" section of this bill analysis for a detailed analysis of each provision.

The bill provides an effective date of upon becoming a law, and further provides that those portions which are amended, created, or repealed by chapter 2009-96, Laws of Florida, must operate retroactively to June 1, 2009. If such retroactive application is held by a court of last resort to be unconstitutional, the bill states that this act should then apply prospectively from the date that this act becomes a law.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives:

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Legal Challenge to Chapter 2009-96, Laws of Florida, (Senate Bill 360)

Procedural Background

In 2009, the Legislature passed and the Governor signed into law CS/CS/SB 360, entitled "An Act Relating to Growth Management" and cited as the "Community Renewal Act." The House passed the final measure with a vote of 78-37 and the Senate passed the final measure with a vote of 30-7. The law was subsequently codified as ch. 2009-96, Laws of Florida.

In July of 2009, a group of Local Governments¹ filed a lawsuit in Leon County Circuit Court based on two counts. Count I alleged that CS/CS/SB 360 violated the single subject provision in Article III, section 6 of the Florida Constitution, and Count II alleged that CS/CS/SB 360 constituted an unfunded mandate on local governments in violation of Article VII, section 18(a) of the Florida Constitution.² The Governor and Secretary of State were named in the suit along with the Speaker of the House and the Senate President.

In August of 2010, the trial court judge issued a final summary judgment and held that Count I, the issue of single subject was moot because the Legislature had passed the adoption act³ during the 2010 Regular Session to adopt previously enacted laws and statutes, thus curing any single subject issues. As to Count II, the trial court judge found that requiring local governments to adopt land use and transportation strategies to support and fund mobility within two years of designating a TCEA constituted an unconstitutional mandate on local governments. The trial court judge declared CS/CS/SB 360 unconstitutional in its entirety and ordered the Secretary of State to expunge the law from the official records of the State.

In September of 2010, the Legislature appealed the trial court judge's decision to the First District Court of Appeal and the Local Governments cross-appealed. The appeal has resulted in an automatic stay of

¹ The Local Governments originally filing suit included: City of Weston, Village of Key Biscayne, Town of Cutler Bay, Lee County, City of Deerfield Beach, City of Miami Gardens, City of Fruitland Park, and City of Parkland. Subsequently, the following other Local Governments intervened: City of Homestead, Cooper City, City of Pompano Beach, City of North Miami, Village of Palmetto Bay, City of Coral Gables, City of Pembroke Pines, Broward County, Levy County, St. Lucie County, Islamorada, Village of Islands, and Town of Lauderdale-By-The-Sea.

² *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Cir. Ct. 2010).

³ Fla. SB 1780 (2010).

the trial court judge's decision meaning that ch. 2009-96, Laws of Florida, remains in effect as the case continues through the appellate process.⁴

In December of 2010, the District Court of Appeal granted expedited review of the case, and initial briefs have since been filed by the Legislature and the Local Governments.⁵ The Legislature on appeal is arguing that the trial court judge erred in declaring a provision in CS/CS/SB 360 an unfunded mandate and also erred in declaring ch. 2009-96, Laws of Florida, unconstitutional in its entirety; in addition, the Legislature is arguing that the Speaker of the House and the Senate President are not proper parties to the suit.⁶ Most recently, the Local Governments have cross-appealed and are arguing that the trial court judge erred in refusing to consider their single subject challenge.⁷

Single Subject- Article III, section 6, Florida Constitution

The Florida Constitution states: "Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title."⁸ The Florida Supreme Court said in *State v. Thompson*, 750 So. 2d 643, 646 (Fla. 1999) that the purposes of the single subject requirement are:

- (1) To prevent hodge-podge or "log-rolling" legislation, *i.e.*, putting two unrelated matters in one act;
- (2) To prevent surprise or fraud by means of provisions in bills about which the titles gave no intimation, and which might therefore be overlooked and carelessly and unintentionally adopted; and
- (3) To fairly apprise the people of the subjects of legislation that are being considered, in order that they may have opportunity of being heard thereon.

The Local Governments argued in their lawsuit that CS/CS/SB 360 addressed multiple subjects unrelated to its stated single subject of "growth management." It was argued that CS/CS/SB 360 contained three subjects: 1) growth management, 2) security cameras, and 3) tax exemptions and valuation methodologies relating to affordable housing.⁹

Single subject defects that may have existed at the time of a law's passage can generally be cured by the Legislature's adoption of the statutes as the official law of Florida.¹⁰ Alternatively, the Legislature can separate and reenact the separate provisions contained in the original chapter law as separate laws.¹¹

Every regular session the Legislature enacts the adoption act, providing for adoption of previously enacted laws and statutes as the official statutory law of the state. The adoption of the Florida Statutes is designed to cure certain defects that existed in an act as originally passed. In 2010, the Legislature passed SB 1780 and adopted the 2010 Florida Statutes and the Governor signed the bill into law.¹² The 2010 Adoption Act adopted all statutes and material passed through the 2009 Regular Session and printed in the 2009 edition of the Florida Statutes.

In August of 2010, the trial court judge issued summary judgment and found that the single subject issue was moot because the Legislature passed the statutory adoption act during the 2010 Regular Session, the Governor signed it into law, and the law took effect on June 29, 2010. The adoption act

⁴ Fla. R. App. P. 9.310(b)(2).

⁵ See Case Docket, *Atwater v. City of Weston*, No. 1D10-5094 (Fla. 1st DCA 2010), available at http://199.242.69.70/pls/ds/ds_docket_search?pscourt=1 (last visited January 19, 2011).

⁶ See Initial Brief of Appellants, *Atwater v. City of Weston*, No. 1D10-5094 (Fla. 1st DCA Dec. 20, 2010).

⁷ Appendix to Answer and Cross-Initial Brief of Local Appellees, *Atwater v. City of Weston*, No. 1D10-5094 (Fla. 1st DCA Jan. 3, 2011).

⁸ Art. III, s. 6, Fla. Const.

⁹ *City of Weston v. Crist*, No. 09-CA-2639 (Fla. 2d Cir. Ct. 2010).

¹⁰ *Salters v. State*, 758 So. 2d 667, 670 (Fla. 2000).

¹¹ See *Martinez v. Scanlan*, 582 So. 2d 1167, 1172 (Fla. 1991).

¹² Ch. 2010-3, L.O.F.

thus cured any single subject defects that existed with CS/CS/SB 360, and the law is no longer subject to challenge on the grounds that it violates the single subject requirement.¹³

In the current appeal before the First District Court of Appeal, the Local Governments are arguing that the trial court judge erred in refusing to consider their single subject challenge.¹⁴

Mandates- Article VII, section 18(a), Florida Constitution

The Florida Constitution provides that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and the law satisfies one of the following conditions:

- The Legislature appropriates funds or provides a funding source not available to the local government on February 1, 1989;
- The law requiring the expenditure is approved by a 2/3 vote of the membership of each house;
- The expenditure is required to comply with a law that applies to all persons similarly situated, including state and local governments; or
- The law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.¹⁵

Article VII, section 18(d) of the Florida Constitution provides an exemption for laws that have an insignificant fiscal impact. The Legislature has interpreted “insignificant fiscal impact” to mean an amount not greater than the average statewide population for the applicable fiscal year times ten cents; the average fiscal impact, including any offsetting effects over the long term, is also considered.¹⁶

The Local Governments argued in their lawsuit that CS/CS/SB 360 contained a number of provisions that constituted an unfunded mandate.¹⁷ Among the alleged mandate provisions was a portion of Section 4 of CS/CS/SB 360 that required local governments with a designated transportation concurrency exception area (TCEA) to adopt into their local comprehensive plan, within two years, land use and transportation strategies to support and fund mobility. It was argued by the Local Governments that amending the comprehensive plan as required by one of the provisions in Section 4 of CS/CS/SB 360 requires local governments “to spend funds or to take an action requiring the expenditure of funds.” The Legislature argued that if the Section 4 provision of CS/CS/SB 360 was an unfunded mandate it would not be unconstitutional because it would be “insignificant” under Article VII, section 18(d), based on the legislative definition.¹⁸

The trial court judge rejected the Legislature’s argument and granted summary judgment on this provision alone declaring it an unconstitutional mandate; because although the Legislature determined the law fulfilled an important state interest it did not pass CS/CS/SB 360 by a 2/3 vote of the membership of the House and Senate and it did not meet any of the other exceptions for passing a mandate under Article VII, section 18(a).¹⁹

¹³ See *State v. Johnson*, 616 So. 2d 1 (Fla. 1993); *Loxahatchee River Env'tl. Control Dist. v. Sch. Bd. of Palm Beach County*, 515 So. 2d 217 (Fla. 1987) *State v. Combs*, 388 So. 2d 1029 (Fla. 1980).

¹⁴ Appendix to Answer and Cross-Initial Brief of Local Appellees, *Atwater v. City of Weston*, No. 1D10-5094 (Fla. 1st DCA Jan. 3, 2011).

¹⁵ Art. VII, s.18(a), Fla. Const.

¹⁶ See Legislative Leadership Memorandum Addressing the Implementation of Constitutional Language Referring to Mandates (issued by Senate President Margolis and House Speaker Wetherell, March 1991); See House Memorandum Addressing the Implementation of Constitutional Language Referring to Mandates (issued by House Speaker Webster, March 1997); See 2009 Intergovernmental Impact Report, pp. 58-77 (March 2010), available at

<http://www.floridalcir.gov/UserContent/docs/File/reports/impact09.pdf> (last visited January 19, 2011).

¹⁷ *City of Weston v. Crist*, No. 09-CA-2639 (Fla. 2d Cir. Ct. 2010).

¹⁸ *Id.*

¹⁹ *Id.*

In the current appeal before the First District Court of Appeal, the Legislature is arguing that the trial court judge erred in his decision regarding the unfunded mandate issue.²⁰

Community Renewal Act of 2009 (Affordable Housing Provisions)

In 2009, the Legislature enacted the Community Renewal Act²¹ (Act) of which portions of the law addressed the following provisions related to affordable housing:

The Florida Housing Finance Corporation

The Florida Housing Finance Corporation (FHFC) functions as a public corporation organized to administer the governmental function of financing or refinancing housing and related facilities.²² The FHFC administers several affordable housing programs, including the Florida Affordable Housing Guarantee Program, First Time Homebuyer Program, Down Payment Assistance, Multifamily Mortgage Revenue Bonds, the State Apartment Incentive Loan (SAIL) Program, the State Housing Initiative Partnership (SHIP) Program and demonstration programs.²³

General definitions relating to the Florida Housing Finance Corporation

The Act defined the term “moderate rehabilitation,” to allow funds to be used to preserve units that are less deteriorated than those requiring “substantial rehabilitation.” The definition limits costs to a minimum of \$10,000 but no more than 40 percent of unit value.²⁴

Powers of the Florida Housing Finance Corporation

The Act directed the FHFC to develop and administer rules, in connection with any FHFC competitive program, criteria establishing a preference for developers and general contractors based in Florida and for developers and general contractors, regardless of domicile, who have substantial experience in developing or building affordable housing through the corporation’s programs.²⁵

Private Activity Bonds /State Allocation Pool

The state allocation pool must be used to provide allocations for those portions of a bond that require allocations under the Internal Revenue Code.²⁶ The Act provided that on or before November 15 of each year, the FHFC’s access to the state allocation pool is limited to the amount of its initial allocation. After the initial allocation, the FHFC may not receive more than 80 percent of the amount in the state allocation pool on November 16 of each year, and may not receive more than 80 percent of any additional amounts that become available during the remainder of the calendar year. The limitation does not apply to the distribution of the unused allocation²⁷ of the state volume limitation to the FHFC.²⁸

State Apartment Incentive Loan Program (SAIL)

The SAIL Program annually provides low interest loans on a competitive basis to for-profit, nonprofit, and public entities to provide affordable housing to very-low-income persons. Program funds provide

²⁰ See Initial Brief of Appellants, *Atwater v. City of Weston*, No. 1D10-5094 (Fla. 1st DCA Dec. 20, 2010). The Legislature has also argued in the trial court and on appeal that it is not a properly consenting party to the lawsuit, and instead the Department of Community Affairs, the agency charged with the law’s enforcement, is the proper party against whom the Local Governments’ claims should be brought.

²¹ Section 1, ch. 2009-96, L.O.F.

²² Section 420.504, F.S.

²³ Florida Housing Finance Corporation, *2009 Annual Report*, at 8-13, available at http://www.floridahousing.org/FH-ImageWebDocs/Newsroom/Publications/AnnualReports/2009AnnualReport_FHFC.pdf.

²⁴ Section 21, ch. 2009-96, L.O.F., amending s. 420.503, F.S.

²⁵ Section 22, ch. 2009-96, L.O.F., creating s. 420.507(47), F.S.

²⁶ Section 159.807(1), F.S.

²⁷ Section 159.81(2)(b)-(d), F.S.

²⁸ Section 15, ch. 2009-96, L.O.F., amending s. 159.807(4), F.S.

gap financing to allow developers to obtain the full financing needed to construct multifamily units. Special consideration is given to properties that target specific demographic groups such as the elderly, the homeless, families, and commercial fishing workers and farmworkers.²⁹

The Act included the following criteria to be considered by the FHFC in its scoring and competitive evaluation of applications for funding under the SAIL program:³⁰

- A sponsor's prior experience, including whether the developer and general contractor have substantial experience, as provided in s. 420.507(47), F.S.
- Green building principles, storm-resistant construction, or other elements that reduce long-term costs relating to maintenance, utilities, or insurance.
- The domicile of the developer and general contractor, as provided in s. 420.507(47), F.S.

The Act also expanded the use of SAIL funds to allow moderate rehabilitation and preservation of existing affordable units.

State Housing Initiative Partnership (SHIP) Program

The SHIP Program provides funds to cities and counties as an incentive to create local housing partnerships and to preserve and expand production and preservation of affordable housing. The program is intended to provide flexibility to local governments to determine the use of funds for housing programs while ensuring accountability for the efficient use of public resources.³¹

Definitions

Current law establishes general definitions relating to the FHFC and numerous statutory definitions for the implementation of the SHIP Program by the FHFC. The Act amended definitions pertaining to the SHIP Program as follows:³²

- The FHFC is permitted, by rule, to approve additional income verification methods consistent with verification methods currently utilized in the lending industry.
- The definition of “eligible housing” was modified to include manufactured homes that meet the standards of the Florida Building Code or predecessor building codes or manufactured housing constructed after 1994.
- The definition of “local housing incentive strategies” authorized the affordable housing advisory committee to propose additional incentive strategies for the local housing assistance plan.
- The definition of “recaptured funds” was revised to clarify the difference between recapture and program income. The Act clarified that funds are only designated as recaptured when no eligible unit is assisted with the funds being recaptured.
- The term “assisted housing” was included in the definitions to mean a rental housing development, including rental housing in a mixed-use development that has received or currently receives funding from any federal or state housing program.
- The term “preservation” was defined to mean actions taken to keep rents affordable in existing assisted housing while ensuring that the property remains in good physical and financial condition for an extended period.

²⁹ Section 420.5087, F.S.; Florida Housing Finance Corporation, *A Summary of Florida Housing's Programs*, available at <http://www.floridahousing.org/FH-ImageWebDocs/AboutUS/ProgramSummaries.pdf>.

³⁰ Section 23, ch. 2009-96, L.O.F., amending s. 420.5087(6), F.S.

³¹ Section 420.9072, F.S.

³² Section 26, ch. 2009-96, L.O.F., amending s. 420.9071, F.S.

Local Housing Distributions of SHIP Funds

Current law establishes the criteria and manner of local housing distributions of the SHIP Program funds by the FHFC.³³ The Act authorized local governments to expend a portion of the local housing distribution to provide a one-time relocation grant to persons who meet the income requirements of the SHIP Program and who are subject to eviction from rental property due to the foreclosure of the rental property.³⁴ The FHFC is required to distribute funds on a quarterly basis or more frequently, rather than a monthly basis subject to availability of funds.³⁵

The Act also authorized the FHFC to set aside \$5 million each year in SHIP funds to:³⁶

- Provide additional funding to counties and eligible municipalities where a state of emergency has been declared by the Governor. Funds not used for this purpose will be distributed to the local governments by the end of the year.
- Counties and eligible municipalities to purchase properties subject to a SHIP lien and on which foreclosure proceedings have been initiated. Each local government that receives funds must repay the funds to the FHFC no later than the expenditure deadline for the fiscal year in which the funds were awarded. Funds not used for this purpose will be distributed to the local governments by the end of the year.

The Act clarified that all counties or municipalities receiving SHIP funds must comply with Florida law, program rules, and the local housing assistance plan.³⁷

Local Housing Assistance Plans

Counties and eligible municipalities participating in the SHIP Program are required to develop and implement a local housing assistance plan to make available to persons of very low income, low income, or moderate income and to persons who have special housing needs such as the elderly, the homeless and migrant farmworkers. The plans are intended to increase the availability of affordable residential establishing a local partnership and using private and public funds to reduce the cost of housing.³⁸ The Act:

- Authorized counties or eligible municipalities to include strategies to assist persons and households having annual incomes of no more than 140 percent of the area median income.
- Included persons with disabilities in the list of persons with special housing needs for which local governments must consider when developing local housing assistance plans.
- Required local governments to state in their local housing assistance plans how they plan to encourage or require innovative design, green building principles, storm-resistant construction and other elements that reduce long-term costs relating to maintenance, utilities, or insurance.
- Encouraged local governments to develop a strategy within local housing assistance plans which provides program funds for the preservation of assisted housing.
- Limited the expenditure of SHIP funds on manufactured housing to 20 percent.
- Provided that when preconstruction activities are conducted as part of a preservation strategy show that preservation of the units is not feasible and will not result in the production of an eligible unit, such costs must be deemed a program expense rather than an administrative expense if such program expenses do not exceed 3 percent of the annual local housing distribution.

³³ Section 420.9073, F.S.

³⁴ Section 27, ch. 2009-96, L.O.F., amending s. 420.9072, F.S.

³⁵ Section 28, ch. 2009-96, L.O.F., amending s. 420.9073(1), F.S.

³⁶ Section 28, ch. 2009-96, L.O.F., amending s. 420.9073(5) and (6), F.S.

³⁷ Section 28, ch. 2009-96, L.O.F., amending s. 420.9073(7), F.S.

³⁸ Section 420.9075, F.S.

- Authorized counties and eligible municipalities to award funds as a grant for construction, rehabilitation, or repair as part of disaster recovery or emergency repairs or to remedy access or health and safety deficiencies.
- Included “persons with disabilities” to the list of demographics that must be tracked by participating local governments.
- Required the repayment of SHIP funds if these funds are found to be expended on ineligible activities.³⁹

Further, the Act extended the income restriction exemption requirements for Monroe County. As an area of critical state concern where the Legislature has declared its intent to provide affordable housing, Monroe County, has been exempted from the statutory reservation of SHIP funds specifically for low-income and very-low-income persons, allowing funding to households at or below 120 percent of average median income. This exception is applied retroactively from July 1, 2008 and was extended to July 1, 2013.⁴⁰

Affordable Housing Incentive Strategies

The Act authorized a local government to appoint a “designee,” who is knowledgeable in the local planning process, to its affordable housing advisory committee in place of the Local Planning Agency (LPA) committee member in cases where the elected body acts as the LPA. The Act clarified that the committee’s evaluation and report must be adopted by the committee, must contain a summary, be available for the public to obtain, and the committee’s final report, evaluation, and recommendations must be submitted to FHFC.⁴¹

Excess Funds in the Local Government Housing Trust Fund

Section 420.9078, F.S., established the criteria and methodology for the distribution of funds that remain in the Local Government Housing Trust Fund. The Act repealed this provision to permit the FHFC to set aside \$5 million each year to fund disaster needs based on damage and recovery need.⁴²

Community Land Trusts

Community land trusts are formed in communities in response to increasing land values and the need to provide affordable housing in high cost areas. A community land trust is “a nonprofit entity that is qualified as charitable under s. 501(c)(3) of the Internal Revenue Code and has as one of its purposes the acquisition of land held in perpetuity for the primary purpose of providing affordable homeownership.”⁴³ Under this provision, a community land trust may convey structural improvements, condominium parcels, or cooperative parcels located on specific parcels of land that are identified by a legal description contained in and subject to a ground lease having a term of at least 99 years for the purpose of providing affordable housing to persons or families who meet the extremely-low-income, very-low-income, low-income, or moderate-income limits of s. 420.0004, F.S.⁴⁴ or the income limits for workforce housing defined in s. 420.5095(3), F.S.⁴⁵

³⁹ Section 29, ch. 2009-96, L.O.F., amending s. 420.9075, F.S.

⁴⁰ Section 29, ch. 2009-96, L.O.F., amending s. 420.9075(5)(e)2., F.S.

⁴¹ Section 30, ch. 2009-96, L.O.F., amending s. 420.9076(2), F.S.

⁴² Section 31, ch. 2009-96, L.O.F., repealing s. 420.9078, F.S.

⁴³ Section 16, ch. 2009-96, L.O.F.

⁴⁴ “Extremely-low-income persons” means one or more natural persons or a family whose total annual household income does not exceed 30 percent of the median annual adjusted gross income for households within the state. The Florida Housing Finance Corporation may adjust this amount annually by rule to provide that in lower income counties, extremely low income may exceed 30 percent of area median income and that in higher income counties, extremely low income may be less than 30 percent of area median income. “Low-income persons” means one or more natural persons or a family, the total annual adjusted gross household income of which does not exceed 80 percent of the median annual adjusted gross income for households within the state, or 80 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater. “Moderate-income persons” means one or more natural persons or a family, the total annual adjusted gross household income of which is less than 120 percent of the median annual adjusted gross income for households within the state, or 120 percent of the median annual adjusted gross income for households within the

The Act established the criteria to be used by property appraisers for determining the just valuation⁴⁶ of certain properties held by a community land trust. Property appraisers must assess the property based on the terms of the ground lease that restricts the use of the land to the provision of affordable housing. When the property is recorded in the official public records of the county in which the land is located, the recorded lease or the recorded memorandum must be deemed a land use regulation during the term of the lease.

Classification of Property for Charitable Exemption

The Act expanded the ad valorem tax exemption for affordable housing properties. Specifically, the Act provided that property owned by a charitable organization exempt under s. 501(c)(3) of the Internal Revenue Code is used for a charitable purpose if the organization has taken affirmative steps to prepare the property to provide affordable housing to persons or families that meet the income limits⁴⁷ in s. 420.004, F.S. Affirmative steps are environmental or land use permitting activities, creation of architectural plans or schematic drawings, land clearing or site preparation, construction or renovation activities, or other similar activities that demonstrate a commitment to providing affordable housing.⁴⁸

If the property is transferred for a purpose other than providing affordable housing or if the property is not in actual use to provide affordable housing within five years after the date the organization is granted the exemption, the total amount of taxes and interest for the period such exemption was effective becomes due and payable. The five year limitation period may be extended if the owner can demonstrate that affirmative steps are being taken to develop the property.⁴⁹

Affordable Housing Property Exemption

The Act extended the affordable housing property ad valorem tax exemption to include property that is held for the purpose of providing affordable housing to persons and families meeting the income restrictions in ss. 159.603(7) and 420.0004, F.S. The property must be owned entirely by a nonprofit entity that is a corporation not for profit, or a Florida-based limited partnership whose sole general partner is a corporation not for profit. The corporation not for profit must qualify as charitable under s. 501(c)(3) of the Internal Revenue Code and in compliance with Rev. Proc. 96-32, 1996-1 C.B. 17. Any property owned by a limited partnership which is disregarded as an entity for federal income tax purposes will be treated as if owned by its sole general partner.⁵⁰

Discretionary Sales Surtaxes/Local Government Infrastructure Surtax

Current law authorizes the eight different types of discretionary sales surtaxes (also known as local option sales surtaxes).⁵¹ The Act amended provisions related to the local government infrastructure surtax to redefine the term “infrastructure” to also mean any land acquisition expenditure for a residential housing project in which at least 30 percent of the units are affordable to individuals or families whose total annual household income does not exceed 120 percent of the area median income adjusted for household size, if the land is owned by a local government or by a special district that enters into an agreement with the local government to provide such housing. The local government or

metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater. “Very-low-income persons” means one or more natural persons or a family, not including students, the total annual adjusted gross household income of which does not exceed 50 percent of the median annual adjusted gross income for households within the state, or 50 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater. Section 420.0004 (8), (10), (11), and (15), F.S.

⁴⁵ Section 16, ch. 2009-96, L.O.F., creating s. 193.018, F.S. “Workforce housing” means housing affordable to a person or family whose total annual income does exceed 140 percent of the area median income, adjusted for household size; or 150 percent of the area median income, adjusted for household size, in areas that were designated as areas of critical state concern. Section 420.5095(3), F.S.

⁴⁶ Factors for property appraisers to consider when determining the just valuation of property is provided under s. 193.011, F.S.

⁴⁷ See *supra* note 4.

⁴⁸ Section 17, ch. 2009-96, L.O.F., amending s. 196.196, F.S.

⁴⁹ *Id.*

⁵⁰ Section 18, ch. 2009-96, L.O.F., amending s. 196.1978, F.S.

⁵¹ Section 212.055, F.S.

special district may enter into a ground lease with an entity for the construction of the residential housing project on land acquired from the proceeds of the local government surtax.⁵²

Land Development Regulations

The Act required land development regulations to maintain the existing density of residential properties or recreational vehicle parks if the properties are intended for residential use and are located in the unincorporated areas with sufficient infrastructure and not located in within a coastal high-hazard area under s. 163.3178, F.S.⁵³

State Office on Homelessness

The State Office on Homelessness, with the concurrence of the Council on Homelessness, is authorized to administer moneys appropriated to it to provide homeless housing assistance grants. The Act expanded the eligible uses of the moneys appropriated for this purpose to include the acquisition of transitional or permanent housing units⁵⁴ for homeless persons.⁵⁵

Affordable Housing for Children and Young Adults Leaving Foster Care

The Act directed the FHFC, agencies receiving funding under the SHIP, local housing finance agencies, and public housing authorities to coordinate with the Department of Children and Families, their agents and community-based care providers to develop and implement strategies and procedures designed to make affordable housing available to young adults who leave the child welfare system.⁵⁶

Supplemental Powers and Duties of District School Board/Affordable Housing

The Act expanded the purposes for which a district school board may provide affordable housing by allowing school boards in areas deemed by the legislature to be areas of critical state concern⁵⁷ to utilize surplus land for affordable housing for teachers and other essential services personnel, such as fire, police and health care workers as defined by local affordable housing plans.⁵⁸

Effect of the Bill

Since its passage, ch. 2009-96, Laws of Florida, has been subject to constitutional scrutiny. A lawsuit filed in 2009 by a group of Local Governments alleged that ch. 2009-96 violated the single subject requirement and contained unfunded mandates. The trial court judge in August of 2010 issued summary judgment finding that the issue of a single-subject violation was now moot since the Legislature had passed the adoption act during the 2010 Regular Session thus curing any single subject defect, and in addition, finding that ch. 2009-96 contained at least one unfunded mandate in violation of Article VII, section 18(a) of the Florida Constitution. Both parts of the trial court judge's decision are currently at issue on appeal.

This bill does not change current law reflected in the 2010 Florida Statutes, but simply reenacts the portions of the existing law most closely relating to affordable housing that were amended by CS/CS/SB 360, in an effort to remove uncertainty and address alleged constitutional defects. House Bill 93 and PCB CMAS 11-02 reenact parts of CS/CS/SB 360 that were alleged in the lawsuit to be

⁵² Section 19, ch. 2009-96, L.O.F., amending s. 212.055(2), F.S.

⁵³ Section 20, ch. 2009-96, L.O.F., amending s. 163.3202, F.S.

⁵⁴ Florida law does not define the term "housing units." However, for purposes of the Homeless Housing Assistance Grant, the Department of Children and Families defines the term "unit" as a bedroom." "A one-bedroom dwelling shall counts as one unit. Likewise, a two-bedroom dwelling shall count as two units; a three-bedroom dwelling is three units, and so forth. Efficiency dwellings shall be counted as one unit. Single room occupancy dwellings shall be counted based on the number of rooms with each room counted as a unit, regardless of number of persons housed in the room, or number of beds." Florida Department of Children and Families, Office on Homelessness, *Homeless Housing Assistance Grant Application Instructions- FY 2010-2011*, at 4 (Aug. 17, 2010), available at <http://www.dcf.state.fl.us/programs/homelessness/docs/2010HomelessHousingApplication.pdf>.

⁵⁵ Section 24, ch. 2009-96, L.O.F., amending s. 420.622(5), F.S.

⁵⁶ Section 25, ch. 2009-96, L.O.F., creating s. 420.628, F.S.

⁵⁷ Section 380.05, F.S.

⁵⁸ Section 33, ch. 2009-96, L.O.F., amending s. 1001.43(12), F.S.

outside the purview of growth management, while PCB CMAS 11-01 reenacts the portions of CS/CS/SB 360 most closely relating to comprehensive planning and land use. By reenacting CS/CS/SB 360 into three separate bills, the Legislature hopes to remove any question of a single subject violation. The mandate issue would also be completely removed if the three bills pass by a 2/3 vote of the membership of the House and Senate.

B. SECTION DIRECTORY:

Section 1: Reenacts s. 159.807(4), F.S., to clarify the non-taxable revenue bond allocation process.

Section 2: Reenacts s. 193.018, F.S., to establish provisions that address assessment of property used for affordable housing which located on Community Land Trusts.

Section 3: Reenacts s. 196.196(5), F.S., to describe activities that are considered use of property for a charitable purpose.

Section 4: Reenacts s. 196.1978, F.S., to amend the ad valorem tax exemption for property used for affordable housing.

Section 5: Reenacts s. 212.055(2)(d), F.S., to expand the uses of the local government infrastructure tax.

Section 6: Reenacts s. 163.3202(2), F.S., to maintain the existing density of residential properties or recreational vehicle parks if the properties are intended for residential use and are located in the unincorporated areas.

Section 7: Reenacts s. 420.503(25), F.S., to define "moderate rehabilitation."

Section 8: Reenacts s. 420.507(47), F.S., created to authorize the FHFC to develop criteria for establishing a preference for developers and general contractors domiciled in Florida.

Section 9: Reenacts s. 420.5087(6), F.S., to include projects that include green-building principles, storm-resistant construction, or other elements that reduce long-term costs to scoring criteria for distribution of SAIL funds and to permit SAIL funds for moderate rehabilitation and preservation of existing affordable units.

Section 10: Reenacts s. 420.622(5), F.S., to expand the eligible uses of the homeless housing assistance grants to include the purchase of existing properties.

Section 11: Reenacts s. 420.628, F.S., to address affordable housing for children and young adults leaving foster care.

Section 12: Reenacts s. 420.9071(4), (8), (16), and (25), (29), and (30), F.S., related to the State Housing Initiative Partnership Act, to define the following terms: "annual gross income," "eligible housing," "local housing inventive strategies," "recaptured funds," "assisted housing," and "preservation."

Section 13: Reenacts s. 420.9072(6) and (7), F.S., to conform cross-reference and allow local governments to expend a portion of the local housing distribution to provide a one-time relocation grant.

Section 14: Reenacts s. 420.9073 (1), (2), (5), (6), and (7), F.S., to revise the criteria and manner of local housing distributions of the State Housing Initiatives Partnership Act by the FHFC.

Section 15: Reenacts s. 420.9075(1), (3), (5), (8), (10), (13), and (14), F.S., relating to local housing assistance plans.

Section 16: Reenacts s. 420.9076, F.S., relating to the adoption of affordable housing incentive strategies.

Section 17: Reenacts the repeal of s. 420.9078, F.S., which directed the state's administration of remaining local housing distribution funds in the Local Government Housing Assistance Trust Fund.

Section 18: Reenacts s. 420.9079, F.S., relating to conforming references.

Section 19: Reenacts s. 1001.43(12), F.S., to expand the purposes for which a district school board may provide affordable housing by allowing school boards in areas deemed by the legislature to be areas of critical state concern to use surplus land for housing for teachers and other essential services personnel.

Section 20: Provides an effective date of upon becoming a law, and those portions of this act which are amended, created, or repealed by chapter 2009-96, Laws of Florida, shall operate retroactively to June 1, 2009. If such retroactive application is held by a court of last resort to be unconstitutional, the bill states that this act should then apply prospectively from the date that this act becomes a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Because this PCB simply re-enacts existing law, there is no fiscal impact. See fiscal comments below.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill reaffirms current law created in ch. 2009-96, Laws of Florida, and thus has no additional fiscal impact. However, on March 20, 2009, the Revenue Estimating Conference adopted the following fiscal impacts for the tax provisions of CS/CS/HB 161 (2009 Session) that were ultimately included in CS/CS/SB 360:

- For provisions of the bill relating to ad valorem tax exemptions for exempt charitable organizations taking affirmative steps to provide affordable housing, the conference adopted an estimated negative impact to local governments of \$200,000 each year over the next five years.
- For provisions of the bill relating to charitable non-profits, the conference adopted an estimated negative impact to local governments of \$400,000 each year over the next five years.
- No fiscal impacts were adopted on the remaining provisions of the bill.

In addition, the bill contained provisions from CS/HB 267 (2009 Session) regarding community land trusts. The fiscal analysis from that bill indicated the following: On March 14, 2009, the Revenue

Estimating Conference determined that the provisions of the bill will have a negative indeterminate impact on local governments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill only serves to reenact existing law, and thus no new fiscal impacts are incurred by local governments. In 2009, the mandates provision appeared to apply to the housing provisions because the bill reduced the authority that municipalities or counties have to raise revenue. The Revenue Estimating Conference determined that the bill would have a negative indeterminate fiscal impact on local governments. However, staff estimated that the impact on municipalities and counties would not exceed \$1.9 million statewide, therefore, the 2009 bill appeared to be exempt from the mandates provision because it had an insignificant fiscal impact.

2. Other:

This bill reenacts portions of existing law most closely related to affordable housing amended by ch. 2009-96, Laws of Florida. Therefore, the bill does not appear to raise any single subject concerns.

See discussion on single subject under the "Current Situation" portion of the analysis.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The provisions of this bill were originally considered in 2009 in CS/CS/HB 161. That bill passed the House of Representatives on a vote of 114 – 0.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A