

Omnibus Housing Bill HB 1339 – How it Affects Your Programs

June 29, 2020



The Florida Housing Coalition

- Statewide nonprofit provider of training and technical assistance
- From ending homelessness to first time homeownership
- See www.flhousing.org



Thank you.



AFFORDABLE HOUSING CATALYST PROGRAM

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Webinar Logistics

- Participants are muted
- Enter your questions in the box in your webinar panel
- Handouts are available with this webinar
- This PPT is included as a handout
- A survey will immediately follow the webinar; *please* complete it! Thanks!



Agenda

- House Bill 1339 – Omnibus Housing Bill
- House Bill 163 – Homelessness Statute Rewrite
- SB 580 - Uniform Partition of Heirs Property Act (UPHPA)
- Questions & Answers

House Bill 1339 – 2020 Legislative Session’s Omnibus Housing Bill

Affordable Housing
Advisory Committees
(AHACs)

SHIP Annual Reporting

Catalyst Program

Accessory Dwelling Units
(ADUs)

Linkage Fees

Zoning & Affordable
Housing

Budget and impact fee
reporting

SAIL

Fraud/Misrepresentation
in FHFC Applications

Youth Aging out of
Foster Care

Mobile
Homes/Manufactured
Housing



The Process

Original bill – Senate Bill 998 (Hutson).

Fall 2019 – Several Senate committee hearings on affordable housing.

The original version of the bill was a result of those hearings.

The bill had several iterations and was worked on by stakeholders.



Sen. Travis Hutson



Rep. Clay Yarborough



1. AHAC Report is now an annual requirement, instead of triennial.

2. Contains minor changes to the affordable housing incentives an AHAC must consider.

3. Effective October 1, 2020, AHACs must consist of one locally elected official from each county or municipality.

1. AHAC Annual (not Triennial) Report

- Each local government that receives SHIP funds must have an Affordable Housing Advisory Committee (AHAC).
- Key role: to prepare the AHAC report and evaluate its implementation.
- AHAC Report:
 - Identifies affordable housing incentive strategies & recommendations for adoption by the local government.
 - Reviews established policies & procedures, ordinances, land development regulations, and comprehensive plan.

HB 1339 (lines 1036-1055)

The AHAC Report, which had been required every three years, is now an annual requirement.



AHAC Annual (not Triennial) Report

- Local governments that have a new LHAP due on May 2, 2021 will have to submit the AHAC report as normal on Dec. 31, 2020. After that, all local governments will be required to submit a report each Dec. 31st starting on Dec. 31, 2021.
- Jurisdictions receiving the minimum allocation under SHIP not required to perform annual AHAC reports.
- The new annual requirement may increase time/money spent on AHAC reports.
- Administrative considerations?
 - Uniform statewide report template
 - Consolidating AHACs w/an interlocal agreement
 - Other options?



Consolidating AHACs?

If consolidating AHACs is an option for you for the purpose of meeting the annual reporting requirement, consider the following:

- How will the AHAC address the land development policies, comprehensive plans, and affordable housing strategies of several local governments?
- Could consolidation of AHACs encourage consolidation of housing strategies?

2. Minor Changes to Affordable Housing Incentives

- HB 1339 slightly alters the list of affordable housing incentives an AHAC is to consider at F.S. 420.9076(4) (lines 1056-1091).
- No substantive changes, merely semantic changes to implement when devising an AHAC report to reflect other changes made by HB 1339.

3. Local Officials on the AHAC

HB 1339 newly requires that each AHAC contain “one locally elected official from each county or municipality participating in the [SHIP] Program.” (lines 1005-1008)

Q: What is a “locally elected official?”

• **A:** This person must be a City or County Commissioner.

Q: What if the AHAC represents two local governments? Do we need a locally elected official from both?

• **A:** It is not required, but it better serves the intent of the law if you have a local elected official from each local government.

Q: What is the process for appointing these locally elected officials?

• **A:** This is up to the local government. HB 1339 contains no guiding language.

Q: When must the elected official be in place?

• **A:** October 1, 2020.



1. Each local government must report each exception and waiver of impact fees provided for construction or development of housing that is affordable.



2. Local government must report annual expenditures for affordable housing to the state Office of Economic and Demographic Research.

Impact Fee Reporting – Waivers for Affordable Housing

- Amends Fla. Impact Fee Act at F.S. 163.31801 (lines 373-390).
- Local governments must report "each exception and waiver [of impact fees] provided for construction and development of housing that is affordable."
- 2019 Legislative Session – amended Impact Fee act to statutorily authorize local governments to waive impact fees for affordable housing.



Budget Reporting

- Amends F.S. 129.03 & 166.241 - required information each local government must submit yearly to the Office of Economic and Demographic Research regarding the final budget. (lines 276-283; lines 450-57)
- This annual report must now include:

Annual county expenditures providing for the financing, acquisition, construction, reconstruction, or rehabilitation of housing that is affordable, as that term is defined in s. 420.0004. The reported expenditures must indicate the source of such funds as "federal," "state," "local," or "other," as applicable. The information required by this subparagraph must be included in the submission due by October 15, 2020, and each annual submission thereafter.

Each SHIP Annual Report must include (lines 991-92):

- The number of affordable housing applications submitted,
- The number approved, and
- Number denied.

Number of Affordable Housing Applications

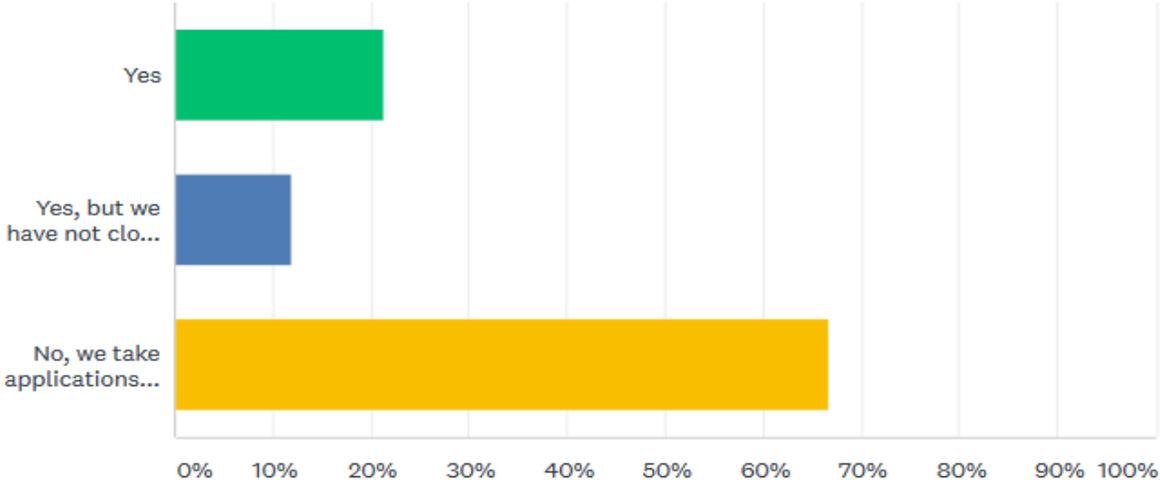
Number of Affordable Housing Applications

Submitted	
Approved	
Denied	

SURVEY Results: Some Local governments close their application portal - <https://www.surveymonkey.com/r/7GNZGML>

SHIP will now require that the report include “the number of affordable housing applications submitted, the number approved, and the number denied.” After advertising a notice of funding availability, do you later close the SHIP application period?

Answered: 42 Skipped: 0



ANSWER CHOICES	RESPONSES
Yes	21.43% 9
Yes, but we have not closed the application period in the last few years	11.90% 5
No, we take applications on an ongoing basis	66.67% 28
TOTAL	42

“Show the Need”

- Local governments that close their application portal when there are funding shortfalls may need to reconsider their system.



of Applications submitted, approved, & denied



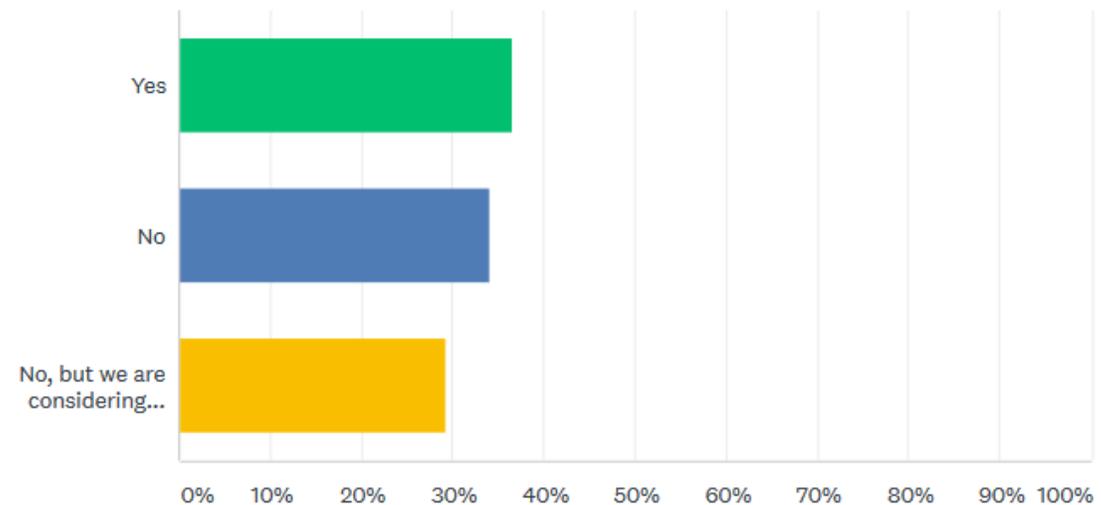
- This new provision also applies to subrecipients and may require an amendment to your subrecipient agreements.
- Also retain Incomplete Applications

SURVEY Results: Application/File Software

- Whether or not you use software, your SHIP office can develop a system of counting applications.
- More training is coming on this topic

Do you keep your applications and other SHIP file documents on Neighborly or some software?

Answered: 41 Skipped: 1



ANSWER CHOICES	RESPONSES
Yes	36.59% 15
No	34.15% 14
No, but we are considering such software	29.27% 12
TOTAL	41

1. New biannual regional workshops for the locally elected officials on the AHACs (lines 933-949)



2. Catalyst now covers the SAIL program (lines 906-912).

Biannual, Regional Workshops

- New biannual, regional workshops for the locally elected officials serving on the AHACs.
- Goals:
 - Information share on affordable housing best practices.
 - Engage local elected officials in affordable housing policy.
- Must be attended by locally elected official or a locally elected designee.
- Failure to attend three consecutive workshops may cause FHFC to withhold SHIP funds

Q: What is a “locally elected designee”?

- **A:** HB 1339 does not define the term but it should be another elected official.



Accessory Dwelling Units

ADUs, also known as granny-flats, mother-in-law suites, and other names, can increase the supply of affordable housing.

ADUs capitalize on the prevalence of the single-family home by allowing more persons to live on a single lot.

ADUs are a smart growth tool for affordable housing and should be allowed in all single-family districts.



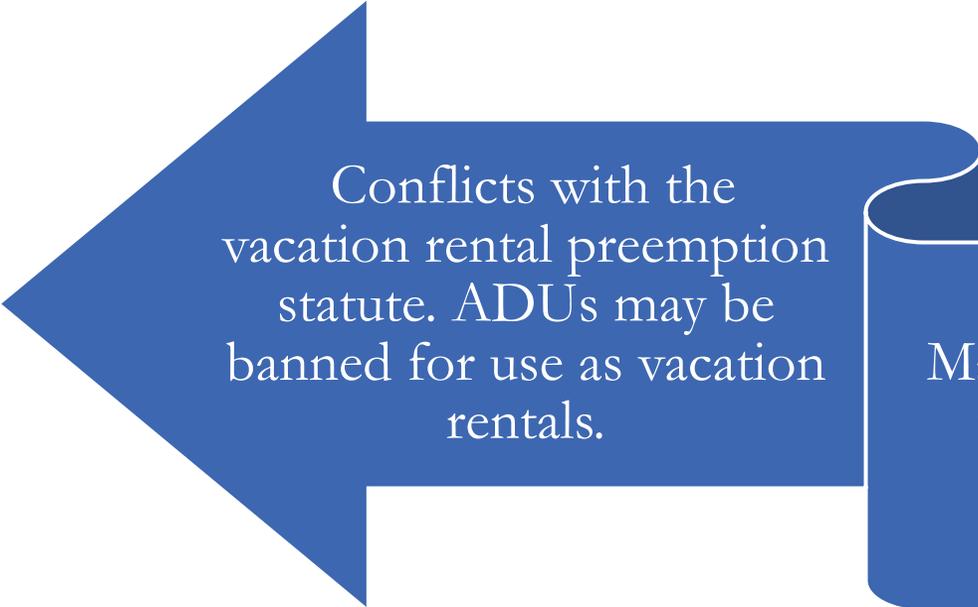
HB 1339 & Accessory Dwelling Units

- HB 1339 amends F.S. 163.31771 – a section of the Community Planning Act. (lines 359-370).
- Before HB 1339, this statute was not required for approval of an ADU.
- The amended law encourages local governments to allow ADUs in all single-family districts by cutting the language that local governments first find that there is “a shortage of affordable rentals within its jurisdiction.”
- Most importantly, it restricts the development of ADUs for the purpose of affordable rental housing.
- ADU building permit applicant must sign an affidavit that “the unit will be rented at an affordable rate to an [income-eligible household].”

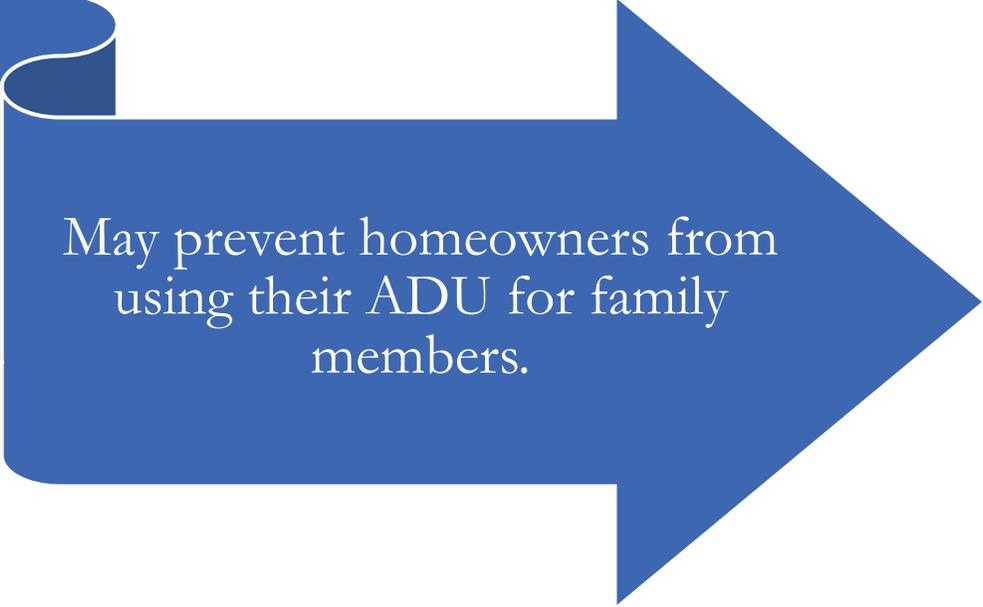


ADU Building Permit Affidavit for Use as an Affordable Rental

Could have unintended consequences.



Conflicts with the vacation rental preemption statute. ADUs may be banned for use as vacation rentals.



May prevent homeowners from using their ADU for family members.

1. Local governments no longer need to make a finding that there is a shortage of rental units to adopt an ADU ordinance under F.S. 163.31771.



2. Requires building permit applications for ADUs to include an affidavit to attest that the ADU will be rented at an affordable rate to income-eligible households.

Linkage Fees Expressly Authorized in Statute

- A linkage fee is a local government tool to raise revenue for affordable housing programs.
- Typically charged on new commercial or industrial development.
- “Links” the new development with the workforce housing needs generated by that new development.
- Before HB 1339, linkage fees were upheld by state and federal case law – the bill merely codifies linkage fees in statute.



1. Expressly authorizes linkage fees in statute at F.S. 125.01055 (counties) and 166.04151 (municipalities) (lines 216-235; lines 395-416).



2. Local governments must “fully offset all costs” associated with linkage fees on residential or mixed-use residential development. This basically makes linkage fees on residential property in Florida not possible/practicable.

Difference Between Linkage and "In-Lieu" Fees

"In-lieu" fees are discussed in reference to inclusionary zoning ordinances. If the ordinance allows, a developer may choose to pay a fee "in-lieu" of building affordable housing units.

Linkage fees can (but do not need to be) used as a complementary tool for local governments to collect a fee on new employee generating development (typically commercial or industrial properties) to be placed in an affordable housing trust fund.



“Fully Offset All Costs”

HB 1339 treats linkage fees on residential and mixed-use residential developments in the same way as inclusionary zoning ordinances.

In exchange for a developer fulfilling the requirements of subsection (2) or, for residential or mixed-use residential development, the requirements of subsection (3), a county must provide incentives to fully offset all costs to the developer of its affordable housing contribution or linkage fee.
(Identical language for municipalities).

A local government does **not** need to fully offset costs associated with a linkage fee on a non-residential development.



Allows local governments to approve the development of affordable housing on any parcel zoned for residential, commercial, or industrial use. (lines 244-248; lines 426-430)

State Override Permission of Local Development Laws

Notwithstanding any other law or local ordinance or regulation to the contrary, the board of county commissioners (or governing board of a municipality) may approve the development of housing that is affordable, as defined in s. 420.0004, on any parcel zoned for residential, commercial, or industrial use.



State Override Permission of Local Development Laws

- Affordable housing developers would not need a land use or zoning change on property that does not currently permit the housing.
 - Ex) a multifamily affordable housing development could be built in a commercial zone without a zoning change.
- This language acts as a "super-waiver" of the comprehensive plan and land development regulations for affordable housing developments.
 - "Notwithstanding any other law . . . to the contrary"
 - Local government has the authority to waive all LDRs to permit an affordable housing project under this language.
 - But, that doesn't mean that local government will waive *all* regulations.



State Override Permission of Local Development Laws



Good

- Could reduce stringent zoning barriers for affordable housing projects
- Could be helpful for missing middle housing & adaptive reuse
- Helpful in combating NIMBY



Bad

- Would be harmful if misused to put affordable housing where people should not be living – e.g. near toxic uses

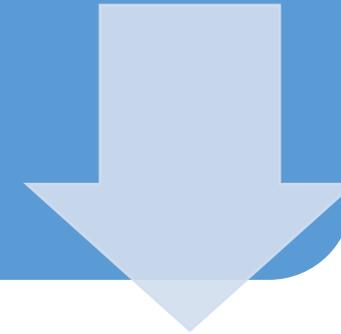
SAIL – FHFC cannot require a sponsor to have prior experience with FHFC as a qualification for funding (lines 668-670).



FHFC may prioritize a portion of SAIL Special Needs funds for the development of housing for youth aging out of foster care (lines 682-693).

Creates F.S. 420.518 - allows FHFC to preclude any applicant from participation in an FHFC program under certain conditions (lines 560-615):

- Made a material misrepresentation on engaged in fraud in connection with any FHFC program
- Been convicted or found guilty of, or pled guilty or nolo contendere, a crime that directly relates to financing or fraudulent procurement of state or federal funds.
- Been excluded from any federal funding program related to housing or Florida procurement program.
- Offered or been given consideration with respect to a local contribution, other than consideration to provide affordable housing.



Permanently authorizes the Community Workforce Housing Loan Program (CWHIP) (lines 697-903)

Amends F.S. Chapter 723 – the "Florida Mobile Home Act" (lines 1100-1918)

- Permits park owner to disclose in prospectus permanent improvements the mobile home owner must install to the mobile home
- Requires mobile home owners to receive written approval before making any exterior modifications
- A mobile home park that is damaged or destroyed due to wind, water, or other natural force, may be rebuilt at the same density as was approved before the damage.
- Purchaser of a mobile home on a rented lot may assume the seller's prospectus.
- HOA duties, powers, and bylaws

House Bill 163

Homeless Statute Cleanup Legislation



HB 163 Purpose

- Chapter 420, part VI of FS governs the State Office on Homelessness, related funding for homelessness, the Council on Homelessness, and provides many important grant definitions and statutory responsibilities
- HB 163 revised and amended several portions of the FS, most notably revising definitions to be consistent with federal definitions and aligned with federal priorities



Homeless Definition - 24 CFR 578.3

1. An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:
(Literally Homeless)
 - i. Has a primary nighttime residence that is a public or private place not meant for human habitation;
 - ii. Is living in a publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, and local government programs); or
 - iii. Is exiting an institution where (s)he has resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution

2. Individual or family who will imminently lose their primary nighttime residence, provided that:
(Imminent Risk of Homelessness)
 - i. Residence will be lost within 14 days of the date of application for homeless assistance;
 - ii. No subsequent residence has been identified; and
 - iii. The individual or family lacks the resources or support networks needed to obtain other permanent housing



Homeless Definition - 24 CFR 578.3

3. Unaccompanied youth under 25 years of age, or families with children and youth, who: (*Homeless under other Federal Statutes*)
 - i. Are defined as homeless under the specific federal statutes in 24 CFR 578.3;
 - ii. Have not had a lease, ownership interest, or occupancy agreement in permanent housing during the 60 days prior to the request for assistance;
 - iii. Have experienced persistent instability as measured by two moves or more during the preceding 60 days; and
 - iv. Can be expected to continue in such status for an extended period of time due to special needs or barriers

4. Individual or family who: (*Fleeing/ Attempting to flee domestic violence*)
 - i. Is fleeing, or is attempting to flee, domestic violence;
 - ii. Has no other residence; and
 - iii. Lacks the resources or support networks needed to obtain other permanent housing



Other Notable Definition Changes

- Continuum of Care
- Continuum of Care Lead Agency/Collaborative Applicant
- *Removed:* Local coalition for the homeless
- *Removed:* New and temporary homeless

Council on Homelessness Changes

- Added seats:
 - One representative from Florida Housing Coalition
 - Secretary of the Department of Elder Affairs
- See all revisions [here](#)



Senate Bill 580 : Sen. Bracy and Rep. Ausley Uniform Partition of Heirs Property Act

"Heirs property" : home or land that passes from generation to generation without a legally designated owner, typically without a will. Heirs own real property as tenants in common.

The Issue: if one co-tenant sells their share to an investor/speculator, that investor/speculator can seek a forced sale of the property – depriving wealth creation and family property held for generations. This has caused significant black land (and wealth) loss.



Sen. Randolph Bracy



Rep. Lorraine Ausley

Senate Bill 580 : Sen. Bracy and Rep. Ausley Uniform Partition of Heirs Property Act

The UPHPA prevents this from happening. Law Professor Thomas Mitchell, credited with the UPHPA movement, will explain the Act in a workshop at our upcoming virtual statewide conference.

(<https://flhousingconference.org/>)



Questions?



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