



2020 Legislative Wrap-Up

By: Mark Hendrickson and Jaimie Ross

The 2020 session was momentous for affordable housing advocates in Florida. We finally achieved full appropriation of the Sadowski State and Local Housing Trust Funds. This has been a long and tough road. It has been 13 years since the housing trust funds have been fully appropriated for housing. It is our great expectation that the new normal of full appropriation has arrived. We were on our way to a massive celebration at the end of session when COVID-19 prevented us from gathering. And now, because of COVID-19, the Governor has vetoed the entire SHIP appropriation. What does that mean?

The SHIP funding distribution chart on the next page is based on the full appropriation we received through legislative appropriation. We have not removed this chart from this article because those funds have not been swept. When the Governor vetoed the SHIP funding on June 29th, those monies were not swept to general revenue. They remain intact in the Local Government Housing Trust Fund. We anticipate the legislature to come back for a special session in November, following the elections. At that time, the SHIP funds can be fully appropriated as intended. Whether that happens is dependent upon a number of factors. We are back on track, but we have one more step to take. We must be successful between now and the special session in the Fall in making the case for full appropriation irrespective of the economic consequences from COVID-19. That case can be made based on the data we have on the housing need and the jobs and huge economic benefit (over \$4 billion dollars) from using SHIP funds for the SHIP programs.

The Sadowski Coalition and Sadowski Affiliates worked tirelessly, and we all owe a great debt of gratitude to Governor Ron DeSantis and Senate President Bill Galvano for being housing champions.

The Omnibus Housing Bill that passed this year was HB 1339. The following are highlights from a 79-page bill that covers a variety of housing and related issues. This is not an exhaustive

coverage. In particular, there are a great number of provisions in the new law related to mobile homes and none of those are covered here. Please see the enrolled HB 1339 for every provision of the new law.

The effective date for all the items covered here is July 1, 2020, unless otherwise stated.

1. Linkage Fees Expressly Permitted

Section 125.01055 F.S., was amended to add linkage fees to the list of expressly permitted land use mechanisms (like inclusionary zoning) which counties (and cities, with identical language in Section 166.0415, F.S) can undertake for the purpose of increasing the supply of affordable housing.

The revised statute goes on to treat linkage fees on residential and mixed-use residential development similarly to inclusionary zoning in terms of keeping the developer's costs offset. The statute explains that an affordable housing linkage fee ordinance may require the payment of a flat or percentage-based fee, whether calculated on the basis of the number of approved dwelling units, the amount of approved square footage, or calculated in another way. The statutory amendment provides that for residential or mixed-use residential development, the county must fully offset all costs to the developer of its linkage fee payment. Basically, the amended statute treats the payment of a linkage fee

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on residential property or mixed-use residential property (residential combined with nonresidential) in the same way inclusionary housing requirements are treated. No such requirement applies to nonresidential development.

The Florida Housing Coalition will provide training in 2020 to help local governments implement this new requirement, beginning with an understanding of best practices for adoption of a linkage fee ordinance. A linkage fee ordinance is typically charged on non-residential uses that create a need for affordable housing. Historically, the requirement could be found in Florida's Development of Regional Impact law. The "Adequate Housing Rule" used to implement that law required large scale nonresidential development to provide housing or payment in lieu of housing to offset the need for affordable housing created by the large-scale nonresidential development. A linkage fee is akin to an impact fee for affordable housing collected from the developers of businesses that create the need for workforce housing. Linkage fees are valid development exactions under Florida and U.S. case law and the statutory change made in HB 1339 merely confirms local government authority to adopt a linkage fee ordinance.

2. State Override Permission of Local Zoning Laws

HB 1339 adds new language at § 125.01055 (6) for counties, and § 166.04151(6) for municipalities, to expressly permit local governments to approve the development of housing that is affordable, as defined in chapter 420.0004, F.S. (which covers housing for extremely low income to moderate income households) on any parcel zoned for residential, commercial, or industrial use. In other words, a developer of affordable housing would not need a land use or zoning change on property that does not currently permit the housing (for example multifamily housing in a single family restricted zone) if the local government chooses to permit the affordable housing development. The impact of this legislation could be significant in terms of promoting ADUs, missing middle housing types such as duplexes and triplexes, and small scale multifamily housing in single family zones, and affordable housing in general, in any zone where it is not a permitted use. This could also be helpful in avoiding NIMBY opposition. The Florida Housing Coalition will specifically address this item in 2020 with education for local elected officials and local government planners.

3. Local Government Budget Reporting related to Affordable Housing

The state statute that covers local budget reporting—section 129.03 (and 166.241) F.S, is amended to specifically require that beginning October 15, 2020 and each year thereafter, the reported expenditures must include expenditures for the financing, acquisition, construction, reconstruction, or rehabilitation of affordable housing (as defined in section 420.0004, F.S) and specify which expenditures were federal, state, local, or other funding.

4. Accessory Dwelling Units

Two tweaks were made to the existing accessory dwelling unit (ADU) law found in section 163.31771, Florida Statutes. The first was to remove language stating that a local government may adopt an ADU ordinance "upon a finding that there is a shortage of affordable rental units within its jurisdiction". This enables a local government to adopt an ordinance to allow accessory dwelling units without such a finding. This can have a positive effect in ensuring that local governments allow ADUs in all single- family zones.

The second line deleted from the existing statute was removal of "If the local government adopts an ordinance under this section". Arguably this would mean that any local government ordinance which allows ADUs would need to meet the balance of the statute which requires that an application for a building permit to construct an ADU must include an affidavit from the applicant which attests that the unit will be rented at an affordable rate to an income qualified household (from extremely-low income to moderate income).

The Florida Housing Coalition supports the use of ADUs for increasing the supply of affordable housing. In recent years, many of the units created have been used for other purposes, such as a Bed & Breakfast or tourist lodging. The change made to this statute could help return the use of ADUs to the originally intended purpose. This ADU statute was enacted many years ago as a way to encourage local governments to increase the supply of affordable rental units by permitting ADUs in all single family residentially zoned areas but did not require it. The Florida Housing Coalition encourages local governments to use this statute to ensure that units created are used for increasing the supply of affordable rental housing.

5. Impact Fees

The existing impact fee statute in section 163.31801, F.S. is amended to require that impact fee reports include each exception and waiver provided for construction or development of housing that is affordable.

6. Fraudulent or material misrepresentation related to FHFC applications

Section 420.518, F.S. is a newly created section in Part V of Chapter 420 that governs the Florida Housing Finance Corporation (FHFC). This new section speaks to bad actors in connection with any FHFC program. Prior to this, FHFC did not have clear authority to prohibit developers who had participated in fraudulent activities or made material representations from participating in their programs. This section gives clear authority for the FHFC Board to permanently or temporarily suspend any developer who commits any one of a series of actions, from fraud to consistent mismanagement of properties, while retaining administrative appeal rights for the developer.

7. State Apartment Incentive Loan (SAIL) program

Section 420.5087, F.S. is amended to add to the criteria that will be used for scoring the competitive SAIL applications,

“policies that promote access to public transportation, reduce the need for onsite parking and expedite permits for affordable housing projects.” This has been added to criteria (8) which speaks to local government contributions and local government comprehensive planning and activities that promote affordable housing. The Florida Housing Coalition will be specifically addressing this in its training for the FHFC in regard to regulatory reform under the Affordable Housing Advisory Committees (AHACs) for SHIP and in our training on the SAIL program. The SAIL program criteria have also been clarified to provide that an applicant’s prior experience will be judged without regard to whether it came from prior experience with a FHFC program. This change can be found in section 420.5087 (12), F.S.

8. Special Needs set-aside in SAIL for Youth Aging out of Foster Care

The SAIL statute now permits the FHFC to prioritize a portion of SAIL funds for person 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. This housing shall 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. The FHFC must consult with the Department of Children and Families to create minimum criteria for such housing.

9. Catalyst Program

The Florida Housing Coalition is newly charged with convening biannual regional workshops for the local elected officials who will now be serving on the Affordable Housing Advisory Committees (AHACs). The purpose is to facilitate peer-to-peer sharing of best practices for affordable housing. If the locally elected official or a locally elected designee fails to attend three consecutive regional workshops, the FHFC may withhold SHIP funds pending the person's attendance at the next regularly scheduled biannual meeting. The Florida Housing Coalition will need to produce an annual report summarizing the deliberations, actions, and recommendations of each region, as well as the attendance record of the local elected officials, which must be submitted to the President of the Senate, the Speaker of the House, and the FHFC by March 31 of the following year. HB 1339 also amends Catalyst Program to add the SAIL program to the list of programs in which the Florida Housing Coalition will provide specialized technical support to local governments and community-based organizations.

10. Local Housing Assistance Plan Reports.

Section 420.9075 (which applies to SHIP) now requires that in the annual report submitted to FHFC, the local government

include "the number of affordable housing applications submitted, the number approved, and the number denied."

11. AHAC Membership and AHAC Recommendations.

The Affordable Housing Advisory Committees that are charged with recommending regulatory incentives for affordable housing under the SHIP program in Section 420.9076, F.S., must now include one locally elected official from each county or municipality participating in the SHIP program. This requirement goes into effect on October 1, 2020.

The AHAC report, which has been triennial, is now an annual requirement. At a minimum, each advisory committee shall submit an annual report to the local government body and to the Florida Housing Coalition which includes recommendation on the implementation of affordable housing incentives. The list of incentives has been modified somewhat and the Florida Housing Coalition will update its training materials to address those changes. Included in the changes is the required attendance of the local elected officials in the regional workshops which will be provided under the Catalyst program and the financial consequences for failing to participate.

The Florida Housing Coalition will be covering a number of these legislative issues at the upcoming conference in August 31- September 2, 2020, and throughout the year. The implementation of this law as it applies to SHIP is now uncertain until the SHIP funds are appropriated. **HNN**



Jaimie A. Ross is the President & CEO of the Florida Housing Coalition. She initiated the Sadowski Coalition in 1991 and continues to facilitate the Sadowski Coalition today. Ms. Ross served as the Affordable Housing Director at 1000 Friends of Florida, a statewide nonprofit smart growth organization, from 1991-2015. Prior to her tenure at 1000 Friends of Florida, Ross was a land use and real property lawyer representing for profit and nonprofit developers and financial institutions with a law firm in Orlando. Ross is the past Chair of the Affordable Housing Committee of the Real Property Probate & Trust Law Section of the Florida Bar.



Mark Hendrickson, president of The Hendrickson Company, is a past Chair and serves as an Executive Committee member for the Florida Housing Coalition. He served as Executive Director of the Florida Housing Finance Agency from its inception in 1981 to 1994. As its first Chief Executive Officer, he led the way in creation of the Sadowski Act. The Hendrickson Company specializes in assisting clients in all areas of affordable housing, including finance and related legislative issues. His clients include for-profit and non-profit developers, the Florida Association of Local Housing Finance Authorities, and four County HFA's.

FY 20-21 BUDGET AS OF 6-30-20 WITH VETOES

APPROPRIATION OF HOUSING TRUST FUND MONIES: \$387 MILLION

Revenue Estimate from January 2020 REC Conference + Trust Fund Balances

	FINAL BUDGET FY 19-20	GOVERNOR	SENATE	HOUSE	FINAL BUDGET FY 20-21
FHFC: SAIL & Other FHFC Line 2281	\$ 39,040,000	\$119,800,000	\$119,800,000	\$48,800,000	\$115,000,000
SHIP Line 2282	\$ 46,560,000	\$267,200,000	\$267,200,000	\$73,200,000	\$225,000,000 VETOED
Hurricane Housing Recover Program (SHIP-like program for Hurricane Michael disaster counties only) Line 2282A	\$ 65,000,000	\$0	\$0	\$25,000,000	\$30,000,000
Rental Recovery Loan Program SAIL-like program (for Hurricane Michael disaster counties only) Line	\$ 50,000,000	\$0	\$0	\$0	\$0
TOTAL HOUSING	\$200,600,000	\$387,000,000	\$387,000,000	\$147,000,000	\$145,000,000
SHTF SWEEP	\$ 10,000,000	\$0	\$0	\$65,000,000	\$0
LGHTF SWEEP	\$115,000,000	\$0	\$0	\$135,000,000	\$0
TOTAL SWEEP	\$125,000,000	\$0	\$0	\$200,000,000	\$0
Unallocated SHTF	\$ 300,000	\$0			\$4,800,000
Unallocated LGHTF	\$7,060,000	\$0		\$13,740,000	\$12,200,000 + \$225 million veto

Proviso/Back of the Bill for FHFC:

- Additional \$250,000 from GR to FHFC for Purpose Built Community through SAIL-VETOED
- \$10 million of HHRP to FHFC for down payment assistance in Bay, Jackson, Gulf, Calhoun, Gadsden, Washington, Liberty, Franklin, Wakulla, Taylor & Holmes Counties
- \$20 million of HHRP for Hurricane Michael recovery distributed based on damage assessment/SHIP style program
- 10% of FHFC funds for competitive grant program for housing developments for persons with developmental disabilities

ADDITIONAL HOMELESS FUNDING FROM GENERAL REVENUE OR DCF TRUST FUNDS

Item	Amount	Line Item	Source	Agency
Challenge Grants	\$3,181,500	350	GR	DCF
Federal Emergency Shelter Grant Program	\$6,359,466 \$852,507	351	Federal Grants TF & Welfare Transition TF	DCF
Homeless Housing Assistance Grants (staffing for 27 homeless lead agencies)	\$3,000,000	352	GR	DCF
Tampa Hillsborough Homeless Initiative- Shared Housing (SB 2490) Senate	\$200,000 VETOED	2272	GR	DEO
Homeless Veteran Homeless Assistance- Brevard (S1186)	\$190,000	352	GR	DCF
Metropolitan Ministries- First Hug Program- Pasco & Pinellas (S2361)	\$300,000 VETOED	352	GR	DCF
Metropolitan Ministries- Miracles for Pasco Program (S2365)	\$250,000 VETOED	352	GR	DCF
Connecting Everyone with Second Chances- Leon & surrounding counties (S1532) (HB 9207)	\$716,000	352	GR	DCF
Citrus Health Network- Safe Haven for Homeless Youth (HB 4165)	\$155,000 VETOED	352	GR	DCF
Clara White Mission (HB 2493)	\$100,000 VETOED	354	GR	DCF
Miami-Dade Homeless Trust (HB 4545) (S Form 1349)	\$250,000 VETOED	376	GR	DCF
CASL Renaissance Manor (HB 4385) (S1599)	\$1,100,000	376	GR	DCF

OTHER PROJECTS FUNDED FROM GENERAL REVENUE

Item	Amount	Line Item	Source	Agency
Casa Familia Village Phase II (HB 3157) House	\$425,000 VETOED	2272	GR	DEO
Windley Key & Key Heights Affordable Housing Project (HB 3709) (SB 2086)	\$1,000,000 VETOED	2279A	GR	DEO
Building Homes for Veterans Senate 2159)	\$1,000,000	2279A	GR	DEO



PROJECTED SHIP ESTIMATES FOR FY 2020-21

(\$225,000,000)

LOCAL GOVERNMENT	COUNTY TOTAL	COUNTY SHARE/ CITY SHARE	LOCAL GOVERNMENT	COUNTY TOTAL	COUNTY SHARE/ CITY SHARE	LOCAL GOVERNMENT	COUNTY TOTAL	COUNTY SHARE/ CITY SHARE
ALACHUA	2,853,301	1,432,928	GILCHRIST	350,000	350,000	PALM BEACH	15,474,352	11,686,231
Gainesville		1,420,373	GLADES	350,000	350,000	Boca Raton		1,010,475
BAKER	350,000	350,000	GULF	350,000	350,000	Boynton Beach		830,973
BAY	1,803,724	1,448,390	HAMILTON	350,000	350,000	Delray Beach		716,462
Panama City		355,334	HARDEE	350,000	350,000	West Palm Beach		1,230,211
BRADFORD	350,000	350,000	HENDRY	434,680	434,680	PASCO	5,650,008	5,650,008
BREVARD	6,354,059	3,512,524	HERNANDO	2,025,388	2,025,388	PINELLAS	10,467,628	5,441,073
Cocoa		206,507	HIGHLANDS	1,106,172	1,106,172	Clearwater		1,247,741
Melbourne		890,839	HILLSBOROUGH	15,454,791	11,278,906	Largo		896,029
Palm Bay		1,232,687	Tampa		4,175,885	St. Petersburg		2,882,785
Titusville		511,502	HOLMES	350,000	350,000	POLK	7,390,637	5,760,263
BROWARD	20,500,575	3,675,751	INDIAN RIVER	1,660,301	1,660,301	Lakeland		1,150,722
Coconut Creek		627,318	JACKSON	512,922	512,922	Winter Haven		479,652
Coral Springs		1,377,639	JEFFERSON	350,000	350,000	PUTNAM	799,767	799,767
Davie		1,113,181	LAFAYETTE	350,000	350,000	ST. JOHNS	2,729,439	2,729,439
Deerfield Beach		848,724	LAKE	3,824,637	3,824,637	ST. LUCIE	3,309,629	789,677
Fort Lauderdale		1,988,556	LEE	7,873,025	4,941,898	Fort Pierce		466,989
Hollywood		1,611,345	Cape Coral		1,990,301	Port St. Lucie		2,052,963
Lauderhill		772,872	Fort Myers		940,826	SANTA ROSA	1,908,025	1,908,025
Margate		631,418	LEON	3,179,267	1,080,633	SARASOTA	4,567,809	3,960,290
Miramar		1,482,192	Tallahassee		2,098,634	Sarasota		607,519
Pembroke Pines		1,793,800	LEVY	434,680	434,680	SEMINOLE	5,037,197	5,037,197
Plantation		965,577	LIBERTY	350,000	350,000	SUMTER	1,393,017	1,393,017
Pompano Beach		1,197,234	MADISON	350,000	350,000	SUWANNEE	493,362	493,362
Sunrise		996,328	MANATEE	4,150,603	3,540,049	TAYLOR	350,000	350,000
Tamarac		699,070	Bradenton		610,554	UNION	350,000	350,000
Weston		719,570	MARION	3,863,758	3,203,828	VOLUSIA	5,773,870	4,071,155
CALHOUN	350,000	350,000	Ocala		659,930	Daytona Beach		721,734
CHARLOTTE	1,953,646	1,739,136	MARTIN	1,699,422	1,699,422	Deltona		980,981
Punta Gorda		214,510	MIAMI-DADE	19,080,166	12,268,546	WAKULLA	363,000	363,000
CITRUS	1,595,120	1,595,120	Hialeah		1,625,630	WALTON	754,146	754,146
CLAY	2,305,672	2,305,672	Miami		3,331,397	WASHINGTON	350,000	350,000
COLLIER	4,046,301	3,821,731	Miami Beach		637,278	TOTAL	218,937,500	218,937,500
Naples		224,570	Miami Gardens		774,655	Disaster Relief Holdback		5,000,000
COLUMBIA	754,146	754,146	North Miami		442,660	Compliance Monitoring		562,500
DE SOTO	389,060	389,060	MONROE	819,327	819,327	Catalyst		500,000
DIXIE	350,000	350,000	NASSAU	904,068	904,068	TOTAL APPROPRIATION		225,000,000
DUVAL	10,395,947	10,395,947	OKALOOSA	2,162,249	1,937,591			
ESCAMBIA	3,439,990	2,848,312	Fort Walton Beach		224,658			
Pensacola		591,678	OKEECHOBEE	454,241	454,241			
FLAGLER	1,190,913	256,880	ORANGE	14,835,481	11,712,612			
Palm Coast		934,033	Orlando		3,122,869			
FRANKLIN	350,000	350,000	OSCEOLA	3,961,560	3,161,721			
GADSDEN	506,422	506,422	Kissimmee		799,839			

SHIP allocation based on
03/09/2020 FY2020-21 Budget
(Less: \$5 million DR holdback, Monitoring
& Catalyst)