

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 2188

SPONSOR: Finance and Taxation Committee and Comprehensive Planning Committee

SUBJECT: Land Development

DATE: April 20, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Herrin</u>	<u>Yeatman</u>	<u>CP</u>	<u>Fav/CS</u>
2.	<u>Cibula</u>	<u>Lang</u>	<u>JU</u>	<u>Favorable</u>
3.	<u>Keating</u>	<u>Johansen</u>	<u>FT</u>	<u>Fav/CS</u>
4.	_____	_____	<u>ATD</u>	_____
5.	_____	_____	<u>AP</u>	_____
6.	_____	_____	_____	_____

I. Summary:

Tax Deeds

The bill clarifies that lands available for taxes which revert to the county 3 years after being offered for public sale shall escheat to the county free and clear of all tax certificates and accrued taxes. Further, the bill provides immunity for the county from environmental liability associated with properties that escheat to the county. It provides that the county and the Department of Environmental Protection (DEP) may enter into a written agreement that addresses investigative and remedial activities for a property that escheats to the county.

Accessory Dwelling Units

This bill provides legislative findings on the lack of affordable rentals for very-low-income, low-income, and moderate-income persons. The bill makes a finding that encouraging local governments to permit accessory dwelling units to increase the availability of affordable rentals serves a public purpose. It provides definitions and authorizes a local government to adopt an ordinance allowing accessory dwelling units (ADUs) in any areas zoned for single-family residential use based upon a finding that there is a shortage of affordable rentals. Each ADU that is allowed under an ordinance adopted under this section shall count towards the affordable housing component of the housing element in the local government's comprehensive plan. The bill requires DCA to report to the Legislature on January 1, 2007, regarding the effectiveness of using ADUs to address a local government's shortage of affordable housing.

Urban Infill and Redevelopment

This bill provides legislative findings regarding the benefits of mixed-use high density development for urban infill and redevelopment areas. It also expresses legislative intent to discourage single-use zoning in those areas. The bill requires the DCA to provide technical

assistance, including a model ordinance, to encourage mixed-use, high density urban infill and redevelopment projects.

In addition, the bill contains legislative findings regarding transfer of development rights programs in urban areas. It expresses legislative intent to encourage high-density development in urban infill and redevelopment areas while protecting historic structures and open spaces. The bill requires DCA to provide technical assistance, including a model ordinance, that promotes the transfer of development rights for urban infill and redevelopment projects.

Water Supplies

The bill requires a local government to address water supply sources necessary to meet existing and future water use demands in its comprehensive plan, extends the deadline for a local government to consider a regional water supply plan in its comprehensive plan, and provides for the local government's work plan for building water supply facilities to be updated at certain intervals. It requires DCA, the DEP, the water management districts, and regional planning councils to provide assistance to local governments relating to the implementation or rural lands stewardship areas. This bill provides that rural land stewardship area designation should be specifically encouraged as a future land use map overlay. Also, it allows for multicounty rural land stewardship areas and deletes acreage thresholds for these areas.

Rural Lands Stewardship Areas

The bill provides that rural lands stewardship area designation should be specifically encouraged as a future land use map overlay. It extends the deadline by which a local government must consider a water supply plan, approved pursuant to s. 373.0361, F.S., in the general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge element of its comprehensive plan. Also, it requires the local government's work plan for building water supply facilities to be updated every 5 years within 12 months after the adoption of a revised regional water supply plan. It provides that a local government, regional planning council, or stakeholder organization of private land owners, in conjunction with another local government, must notify the DCA in writing of its intent to designate a rural land stewardship area. It reduces the acreage thresholds for these stewardship areas from not less than 50,000 to not to exceed 250,000 acres to not less than 10,000 acres without a acreage cap.

Brownfield Redevelopment Bonus Refunds Program

The bill reduces the number of jobs that must be created for participation in the brownfield redevelopment bonus refund and increases the percentage of a primary lender loan to which the limited state loan guaranty applies for redevelopment projects in brownfield areas.

Condominiums

The bill clarifies, as it relates to condominiums, that no state, county, or municipal entity shall be deemed "the developer" under s.718.103. In addition, the bill prohibits an outside party from purchasing the fee interest of real property owned by a county or municipal entity without their consent.

The bill substantially amends the following sections of Florida Statutes: 197.502, 163.3167, 163.3177, 163.3187, 288.107, 376.86, 718.103, and 718.401.

II. Present Situation:

Urban infill and redevelopment projects are those projects that use vacant or under-utilized parcels within an urban area to improve existing neighborhoods and encourage economic development. In general, as communities have continued to grow with low density development and new public facilities towards the fringe, many older urban areas have begun to decline and are now considered distressed neighborhoods. The issue of strategies to promote and encourage urban infill and redevelopment was the subject of an interim project by the Committee on Comprehensive Planning in 2004.¹ In this report, staff discussed the obstacles to infill and redevelopment in an urban area, including land assemblage issues, abandoned properties, environmental contamination, outdated zoning regulations, and inadequate infrastructure. The Legislative Committee on Intergovernmental Relations also issued a report on Urban Revitalization this year and provided several preliminary policy options, but did not recommend any significant statutory changes.²

At the same time urban infill and redevelopment projects are facing numerous barriers, the cost of housing continues to rise in many urban communities. Families move farther from work centers in search of housing that is within their income range. During the past three years, the median price for an existing home in Palm Beach County has risen by 73 percent while the county's median family income has risen by only 7 percent.³ The median selling price for a home in Palm Beach County is now \$290,000.⁴ Similarly, Broward County has experienced a sharp increase in home prices. The median price for an existing single-family home is \$226,000.⁵ However, a family earning the Broward County median household income of \$56,400 can only afford a \$162,000 home under federal standards which allow 30% of annual income as the upper limit of income payable towards housing.

In order to address the rising cost of housing, some communities have worked with community development corporations to build mixed-use and mixed-income projects in urban areas.⁶ These types of projects are high density with multiple uses including retail, office, and residential units. Also, these projects may have a number of units available to reduced-income buyers at lower prices.⁷ In general, these types of high density, mixed-use developments have been successful, but are still in need of incentives because of some of the impediments to urban infill and redevelopment.

Several states have turned to the use of "granny flats" or accessory dwelling units (ADUs) to alleviate severe housing shortages. For example, California recently enacted legislation that

¹ *Strategies to Promote and Encourage Urban Infill and Redevelopment*, Committee on Comprehensive Planning, Interim Project Report 2004-165, December 2003.

² *Urban Revitalization in Florida*, Legislative Committee on Intergovernmental Relations (Preliminary Summary), December 2003.

³ *\$240,000 It's the New Norm in Palm Beach County*, Jennifer Peltz and John Maines, South Florida Sun-Sentinel, Nov. 24, 2003.

⁴ *See id.*

⁵ *\$226,000 It's the New Norm for Homes in Broward County*, Brittany Wallman and John Maines, South Florida Sun-Sentinel, Nov. 23, 2003.

⁶ *Housing Communities Near Atlantic Avenue Draw Good Review from Delray Residents*, Michelle Brown, Florida Sun Sentinel, Nov. 24, 2003.

⁷ *See id.*

requires cities to establish standards for ADUs. An application that meets the city's established standards (i.e., size, height, set-back, and parking) for an accessory dwelling unit must be approved without a public hearing.⁸ Although some groups oppose this new legislation, some California cities have already authorized ADUs and are offering incentives such as the waiver of permitting fees for ADUs that rent for 80 percent of the median monthly income in the city. Proponents of ADUs argue these units generate more property tax revenue as the result of higher assessments and local governments save some of the expense associated with building additional affordable housing units.⁹ The state of Washington requires its cities with more than 20,000 people to allow ADUs in any neighborhood.¹⁰

Growth Policy Act

The Florida Legislature passed urban infill and redevelopment legislation in 1999, allowing local governments to designate urban infill and redevelopment areas.¹¹ The intent of this legislation was to have a holistic approach to revitalizing urban centers, ensuring the adequate provision of infrastructure and education facilities, and the creation of jobs and economic opportunity. The legislation provided incentives for designating urban infill and redevelopment areas and created a grant program for local governments. The Legislature appropriated \$2.5 million in fiscal year 2000-01 to implement the Urban Infill and Redevelopment Assistance Grant Program. In addition, the legislation provided exceptions from transportation concurrency requirements, substantial deviation thresholds for Developments of Regional Impact, and limitations on comprehensive plan amendments for certain types of development within designated urban infill and redevelopment areas. Notwithstanding the incentives for urban infill and redevelopment, there are persistent barriers to urban infill and redevelopment projects.

Tax Certificate Process

The issue of returning property that is encumbered by a tax lien and publicly owned properties to productive use has become an important issue in many areas of the country. The ability of a municipality to deal efficiently with tax delinquent properties affects urban infill and redevelopment projects. Abandoned or vacant properties in an urban area often become a haven for criminal activity, cause surrounding property values to decline, and discourage investment by current and potential residents and commercial investors. The benefits of returning these properties to productive use include increased tax revenues, improvement of surrounding properties by current residents and business owners, new residential and commercial investment, and improvement in the quality of life for neighborhood residents.¹²

Chapter 197, F.S., provides the exclusive method for enforcing tax liens resulting from unpaid ad valorem taxes and special assessments. Section 197.502(7), F.S., provides that if there are no bidders at a public sale, the property is listed as "land available for taxes" and the clerk is required to notify the county commission and all certificate holders that the land is available. Within 90 days from the public sale, the county may purchase the land for the opening bid. For county held certificates on nonhomestead property, the opening bid is the value of all

⁸ See *Cities Scrambling to Control "Granny Flats"*, Daniel S. Levine, East Bay Business Times, June 16, 2003.

⁹ *"Granny Flats" Finding a Home in Tight Market*, Haya El Nasser, USA Today, Jan. 5, 2004.

¹⁰ See *Cities Scrambling to Control "Granny Flats"*, Daniel S. Levine, East Bay Business Times, June 16, 2003.

¹¹ Ch. 99-378, § 1, Laws of Fla.

¹² *Renewing Public Assets for Community Development*, Professor Frank S. Alexander, LISC [Local Initiatives Support Corporation] Online Resource Library at 1.

outstanding tax certificates plus omitted years' taxes, delinquent taxes, interest, and all fees and costs paid by the county.¹³ The opening bid for an individual certificate holder on nonhomestead property must include the amount of money paid to the tax collector by the certificate holder at the time of the application, the amount required to redeem the applicant's tax certificate, and all other costs and fees paid by the applicant.¹⁴

Section 197.502(8), F.S., provides that land not bought during a public sale is transferred 3 years from the day of the sale to the county and all certificates and liens against the property are cancelled. In addition, counties are authorized to cancel county-held tax certificates and omitted years' taxes on properties acquired under that section to provide infill housing. Also, property acquired by the county under s. 197.502, F.S., for infill housing does not have a right of redemption, i.e., the county is prohibited from transferring such property back to the previous owner or any entity in which the taxpayer or the taxpayer's family has an interest. Some counties in Florida have infill housing programs that attempt to expedite the process of "recycling" tax delinquent properties. However, at least one county has experienced delays in clearing title to those properties.

Environmental Liability and Escheated Property

Currently, a county does not enjoy any immunity from liability for a property with environmental contamination that escheats to the county. The Department of Transportation (DOT) has an immunity provision relating to property that it acquires through eminent domain. Section 337.27, F.S., provides that the DOT is not subject to liability under chapters 376 or 403 for preexisting soil or groundwater contamination due solely to its ownership. This provision does not affect the rights or liabilities of any past or future owners to the liability of any governmental entity for any actions that create or exacerbate a pollution source. The DOT and the DEP are authorized to enter into an interagency agreement regarding the performance, funding, and reimbursement of the investigative and remedial acts necessary for any property acquired by DOT through eminent domain.

Land Development Regulations

Many local zoning codes and land use designations discourage high density development. In particular, many mixed-use developments or those that combine commercial and residential uses require a variance or zoning change. Such projects usually also require an increase in density under existing zoning regulations. The cost associated with developing or redeveloping a property that does not conform to existing zoning regulations may deter some developers. Alternatively, the developer may pursue a lower-density project outside the urban service area that contributes to sprawl.

Some municipalities have dealt with the density issue creatively through the use of transferable development rights. The concept of transferable development rights has typically been used to allow the purchase or transfer of density units from rural lands to allow for a higher density development in a selected area. However, some local governments have begun using transferred development rights for redevelopment projects. The City of West Palm Beach recently adopted an ordinance allowing the owner of a building that is smaller than allowed under existing zoning

¹³ S. 197.502(6), F.S.

¹⁴ S. 197.502(6), F.S.

regulations to sell the difference to a developer upon agreeing to a historic designation for the structure.¹⁵ Those development rights are then transferred to eligible properties. Under the ordinance, the developer may exceed certain height restrictions when using transferred development rights.

Comprehensive Planning

The Local Government Comprehensive Planning and Land Development Regulation Act of 1985¹⁶ (Act) establishes a growth management system in Florida which requires each local government (or combination of local governments) to adopt a comprehensive land use plan that includes certain required elements, such as: a future land use plan; capital improvements element; and an intergovernmental coordination element. The local government comprehensive plan is intended to be the policy document guiding local governments in their land use decision-making.

Under the Act, DCA was required to adopt by rule minimum criteria for the review and determination of compliance of the local government comprehensive plan elements with the requirements of the Act. Such minimum criteria must require that the elements of the plan are consistent with each other and with the state comprehensive plan and the regional policy plan; that the elements include policies to guide future decisions and programs to ensure the plans would be implemented; that the elements include processes for intergovernmental coordination; and that the elements identify procedures for evaluating the implementation of the plan.

Section 163.3167(1), F.S., of the act provides for municipalities or counties to plan for their future development and growth, adopt and amend their comprehensive plans and elements of the plan, implement their adopted or amended comprehensive plans through the adoption of appropriate land development regulations, and to establish and maintain administrative procedures to implement the provisions of the act. Each local government is required to prepare an Evaluation and Appraisal Report (EAR) every 7 years that assesses the local government's progress in implementing its comprehensive plan.¹⁷

In 2002, the Legislature amended s. 163.3177(6)(c), F.S., to require a local government to consider the appropriate water management district's water supply plan in its general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge element by January 1, 2005, or its EAR adoption deadline, whichever occurs first. The element must also include a workplan, including at least a 10-year planning period, for building water supply facilities necessary to serve existing and new development in the local government's jurisdiction.

Rural Land Stewardship Areas

Section 163.3177(11), F.S., provides for the establishment of rural land stewardship areas. This program is intended to allow for land use efficiencies within existing urban areas and allows for the conversion of rural lands to other uses, where appropriate and consistent with the affected local comprehensive plan, through the use of innovative planning and development strategies. Such strategies may include urban villages, new towns, satellite communities, clustering and

¹⁵ Sec. 94-116, West Palm Beach Code of Ordinances. *See also Law Lets Building Owners Cash in on History*, Thomas R. Collins, Palm Beach Post, Sept. 15, 2003.

¹⁶ Ss. 163.3161-163.3246, F.S.

¹⁷ Section 163.3191(1), F.S.

open space provisions, mixed-use development and sector planning.¹⁸ The DCA is authorized to allow up to five local governments to designate all or portions of their lands, that are classified in the future land use element as agricultural, rural, or an equivalent land use, as a rural land stewardship area.¹⁹

- The rural land stewardship area designation is intended to further the broad principles of rural sustainability, including:
- Restoration and maintenance of the economic value associated with rural lands;
- Control of urban sprawl;
- Identification and protection of ecosystems, habitats, and natural resources;
- Promotion of rural economic activity;
- Maintenance of the vitality of Florida’s agricultural economy; and
- Protection of the character of Florida’s rural areas.²⁰

A local government may apply to DCA in writing to request consideration for authorization to designate a rural land stewardship area. Such area may not be less than 50,000 acres and may not exceed 250,000 acres in size. The designated area must be located outside of a municipality and established urban growth boundaries.²¹ The plan amendment designating the rural land stewardship area must include criteria for the creation of a receiving area within the stewardship area. At a minimum, this criteria must include the adequacy of suitable land for development that avoids conflict with environmentally sensitive land, compatibility between the transition of uses from higher density to lower intensity rural uses, and receiving area service boundaries which separate receiving areas from other land uses within the stewardship area.²²

Following the adoption of a plan amendment that creates a rural land stewardship area, a local government, by ordinance, is required to assign credits to the area known as “transferable rural land use credits.” These credits may only be used on lands designated as receiving areas and solely for the purpose of implementing innovative planning and development strategies. The underlying density assigned to a parcel ceases to exist once it is transferred to a receiving area or the underlying density to the parcel is utilized. The use or conveyance of these credits must be recorded in the county records where the property is located as a covenant or restrictive easement running with the land in favor of the county, a resource agency, or a recognized statewide land trust. Land may be withdrawn from a rural land stewardship area through a plan amendment.²³

Brownfields

Section 288.107, F.S., provides for the brownfield redevelopment bonus refund. The term “brownfield site” is defined as an abandoned, idled, or underused industrial or commercial property where expansion or redevelopment is complicated by actual or perceived environmental contamination. A “brownfield area” means a contiguous area of one or more brownfield sites. The Office of Tourism, Trade, and Economic Development is authorized to approve bonus

¹⁸ Section 163.3177(11)(b), F.S.

¹⁹ Section 163.3177(11)(d), F.S.

²⁰ Section 163.3177(11)(d)2., F.S.

²¹ Section 163.3177(11)(d)6., F.S.

²² Section 163.3177(11)(d)6., F.S.

²³ Section 163.3177(11)(d)6., F.S.

refunds of up to \$2,500 for any qualified target industry business that meets certain criteria.²⁴ The minimum criteria for participating in the brownfield redevelopment bonus refund include the creation of at least 10 new full-time permanent jobs and the completion of a fixed capital investment of at least \$2 million in mixed-use business activities. The jobs created may not include construction or site rehabilitation jobs associated with implementing a brownfield site agreement.

Section 376.86, F.S., creates the Brownfield Areas Loan Guarantee Program. Specifically, the Brownfield Areas Loan Guarantee Council reviews, approves, or denies the situations and circumstances for participation by agreements with local governments, lenders, and others associated with the redevelopment of brownfield areas for a limited state of up to 5 years of loan guarantees or loan loss reserves. This limited state loan guaranty applies only to 10 percent of the primary lender loans for redevelopment projects in brownfield areas.²⁵

The Office of Program Policy Analysis and Government Accountability (OPPAGA) recently issued a progress report on the Brownfields Redevelopment Program.²⁶ The report recommended eliminating the requirement that a business create a minimum of 10 new jobs to receive brownfield incentives. Additionally, OPPAGA recommends increasing the state guarantee on loans to developers from 10 percent to 50 percent or higher.

Condominiums

Chapter 718, F.S., provides for the “Condominium Act.” Section 718.103, F.S., provides for definitions. Subsection (16) defines “developer” to mean “...a person who creates a condominium or offers condominium parcels for sale or lease in the ordinary course of business, but does not include an owner or lessee of a condominium or cooperative unit who has acquired the unit for his or her own occupancy...”.

Section 718.401, F.S., provides that a condominium may be created on lands held under lease or may include recreational facilities or other common elements or commonly used facilities on leaseholds if, on the date the first unit is conveyed by the developer to a bona fide purchaser, the lease has an unexpired term of at least 50 years.

III. Effect of Proposed Changes:

Tax Deeds

Section 1. The bill amends s. 197.502, F.S., providing that lands available for taxes which revert to the county 3 years after being offered for public sale shall escheat to the county free and clear of all tax certificates and accrued taxes. The bill specifies that liens of any nature against the property are cancelled and the clerk is required to issue an escheatment tax deed vesting title in the board of county commissioners where the property is located. Further, the bill provides immunity for the county from environmental liability associated with properties that escheat to the county. This does not affect the rights or liabilities of any past or future owners to the

²⁴ Section 288.107(2), F.S.

²⁵ Section 376.86(1), F.S.

²⁶ *Brownfield Rehabilitation Is Increasing; More Time Needed to Assess Program's Impact*, Office of Program Policy Analysis and Government Accountability, Report No. 04-18, Feb. 2004.

liability of any governmental entity for any actions that create or exacerbate a pollution source. It provides that the county and DEP may enter into a written agreement that addresses investigative and remedial activities for a property that escheats to the county.

Accessory Dwelling Units

Section 2. of the bill provides legislative findings on the lack of affordable rentals for very-low-income, low-income, and moderate-income persons. The bill makes a finding that encouraging local governments to permit accessory dwelling units to increase the availability of affordable rentals serves a public purpose. It provides definitions for the following terms: accessory dwelling unit, affordable rental, local government, low-income persons, moderate-income persons, and very-low-income persons.

The bill authorizes a local government to adopt an ordinance allowing Accessory Dwelling Units (ADUs) in any area zoned for single-family use based upon a finding that there is a shortage of affordable rentals in its jurisdiction. Each ADU that is allowed by an ordinance adopted under this section shall count towards the affordable housing component of the housing element in the local government's comprehensive plan. Finally, the bill requires DCA to report to the Legislature on January 1, 2007, regarding the effectiveness of using ADUs to address a local government's shortage of affordable housing. The report must include the number of ordinances adopted under this section and the number of ADUs created under those ordinances.

Water Supplies

Section 3. The bill creates subsection (13) of s. 163.3167, F.S., to require a local government to address, in its comprehensive plan, water supply sources necessary to meet existing and projected water use demand for the applicable planning period.

Rural Lands Stewardship Areas

Section 4. The bill amends s. 163.3177, F.S., providing that rural lands stewardship area designation should be specifically encouraged as a future land use map overlay. It extends the deadline by which a local government must consider a water supply plan, approved pursuant to s. 373.0361, F.S., in the general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge element of its comprehensive plan. Also, it requires the local government's work plan for building water supply facilities to be updated every 5 years within 12 months after the adoption of a revised regional water supply plan. Amendments to incorporate the work plan do not count toward the limitation on the frequency of adoption of amendments to a comprehensive plan.

The bill also requires DCA, DEP, the water management districts, and regional planning councils to provide assistance to local governments relating to the implementation or rural lands stewardship areas. This assistance may include, but is not limited to, the following:

- Assistance from DEP and the water management districts in creating a geographic information systems land cover database and aerial photogrammetry necessary that is needed to designate a stewardship area;

- Allocation of funds for conservation easement and land acquisition programs that could be leveraged to protect greater acreages using a rural land stewardship area approach; and
- Expansion of DCA's role as a resource agency and grants to facilitate the establishment of these stewardship areas in rural counties that do not have the staff or planning budget to create such an area.

The provisions of this bill allow for the designation of multicounty rural land stewardship areas. It provides that a local government, regional planning council, or stakeholder organization of private land owners, in conjunction with another local government, must notify the DCA in writing of its intent to designate a rural land stewardship area. It reduces the acreage thresholds for these stewardship areas from, not less than 50,000 acres to not to exceed 250,000 acres, to not less than 10,000 acres without a acreage cap. Also, it allows transferable land use credits to be assigned at different ratios according to the natural resource and other beneficial characteristics of the land and according to the land use remaining following the transfer of credits.

The bill exempts a comprehensive plan amendment that establishes or implements a rural land stewardship area from the limitation on the frequency of plan amendments.

Urban Infill and Redevelopment

Section 5. The bill also amends s. 163.3177(11), F.S., to provide legislative findings regarding the benefits of mixed-use high density development for urban infill and redevelopment areas. It also expresses legislative intent to discourage single-use zoning in those areas. The bill requires DCA to provide technical assistance, including a model ordinance, to encourage mixed-use, high density urban infill and redevelopment projects.

The bill also amends s. 163.3177(11), F.S., to provide legislative findings regarding a program for the transfer of development rights in urban areas. It expresses legislative intent to encourage high-density development in urban infill and redevelopment areas while protecting historic structures and open spaces. The bill requires DCA to provide technical assistance, including a model ordinance, that promotes a program for the transfer of development rights for urban infill and redevelopment projects.

Brownfield Redevelopment Bonus Refunds Program

Section 6. The bill amends s. 288.107, F.S., reducing the number of full-time permanent jobs, from 10 to 5, that are required for a business to participate in the brownfield redevelopment bonus refund.

Section 7. The bill amends s.376.86, F.S., increasing the percentage of a primary lender loan to which the limited state loan guaranty applies for redevelopment projects in brownfield areas.

Section 8. The bill amends s. 718.103(16), F.S., to specifically exclude from the definition of "developer", any state, county or municipal entity.

Section 9. The bill amends s. 718.401, F.S., providing that notwithstanding anything to the contrary, no association, individual unit owner or any third party shall have the right to purchase the fee interest of any real property owned by a county or municipal entity, unless agreed to by the governmental entity.

Section 10. Provides an effective date of July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill excuses homeowners from covenants and restrictions, as adopted by the respective homeowner's association or as specified in legal instruments that created the association, which prohibit accessory dwelling units or secondary units. Retroactive application of this bill may raise the issue of impairing obligations of contracts.²⁷

Article I, Section 10 of the United States Constitution prohibits state legislatures from enacting laws impairing the obligation of contracts. As early as 1880, the federal courts recognized that the contract clause does not override the police power of the states to establish regulations to promote the health, safety, and morals of the community.²⁸ The severity of the impairment is a key issue when evaluating whether a state law impairs a contract.²⁹ In *Exxon Corp. v. Eagerton*³⁰, the Supreme Court suggested it would uphold legislation that imposes a generally applicable rule of conduct designed to advance a broad societal interest that only incidentally disrupts existing contractual relationships.

In 1989, the Federal District Court in Tampa held that the state statute permitting condominium unit owners to display the American Flag [s. 718.113(4), F.S.] did not impair existing contract rights of the condominium association to restrict such display. The court suggested in dicta that personal display of the flag is constitutionally protected speech, and because "the statute did not create rights, but merely recognized them, it does not impair existing contract rights."³¹

²⁷ Art. I, § 10, Fla. Const.; Art. I, § 10 U.S. Const.

²⁸ *Stone v. Mississippi*, 101 U.S. 814 (1880).

²⁹ *General Motors Corp. v. Romein*, 503 U.S. 181 (1992).

³⁰ 462 U.S. 176 (1983).

³¹ *Gerber v. Longboat Harbour North Condominium, Inc.*, 724 F.Supp. 884 (M.D.FL., 1989).

Article I, Section 10 of the Florida Constitution also prohibits the state from enacting laws impairing the obligation of contracts. While Florida courts have historically strictly applied this restriction, they have exempted laws when they find there is an overriding public necessity for the state to exercise its police powers.³² This exception extends to laws that are reasonable and necessary to serve an important public purpose,³³ to include protecting the public's health, safety or welfare.³⁴

Historically, both the state and federal courts have attempted to find a rational and defensible compromise between individual rights and public welfare when laws are enacted that may impair existing contracts.³⁵

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill provides for an escheatment tax deed that is free and clear of all tax certificates, accrued taxes, and other liens and vests title in the board of county commissioners for properties that have been offered for public sale for a 3-year period and have reverted to the county. This should reduce litigations costs regarding title issues for parties that purchase a property after it has escheated to the county.

In addition, the bill authorizes local governments, based on a finding that there is a shortage of affordable rentals, to permit ADUs in any single family neighborhood. This should assist very-low-income, low-income, and moderate-income persons in finding an affordable rental in those areas that currently have housing costs that exceed an amount a person earning the median income for the area can afford. The ADUs would also provide additional income for the property owner.

This bill reduces the number of jobs that a business must create to receive brownfield incentives. It also increases the state guaranty on loans to developers from 10% to 50% for redevelopment projects in brownfield areas. This could result in the rehabilitation of a greater number of designated brownfield areas which benefits both the developer and the community where the brownfield site is located.

³² *Park Benziger & Co. v. Southern Wine & Spirits, Inc.*, 391 So. 2d 681 (Fla. 1980).

³³ *Yellow Cab Co. v. Dade County*, 412 So. 2d 395 (Fla. 3rd DCA 1982), *cert. denied*, 424 So. 2d 764 (Fla. 1982).

³⁴ *Khoury v. Carvel Homes South, Inc.*, 403 So. 2d 1043 (Fla. 1st DCA 1981), *cert. denied*, 412 So. 2d 467 (Fla. 1981).

³⁵ *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774 (Fla. 1979).

C. Government Sector Impact:

The bill authorizes a local government, based upon a finding that there is a shortage of affordable rentals in its jurisdiction, to permit ADUs in any single family neighborhood. This could lead to increased property tax revenues.

The DCA is required by the bill to provide technical assistance to local governments, including the development of a model ordinance, that encourages mixed-use, high density development in urban infill and redevelopment areas and also a transfer of development rights program in those areas. In addition, DCA and the water management districts must assist local governments with the creation and implementation of rural land stewardship areas.

The bill prohibits any outside party from purchasing the fee interest of real property owned by a county or municipal entity without their consent.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.