



City of Key West Staff Report NR: 009-2026

Subject: Affordable Housing
Bill Numbers: CS/CS/HB 1389
Effective Date: July 1, 2026
Reference Documents: CS/CS/HB 1389

I. BILL SUMMARY

CS/CS/HB 1389 expands and modifies Florida's Live Local affordable housing framework by requiring counties and municipalities to authorize certain multifamily and mixed-use residential developments in areas zoned for commercial, industrial, or mixed use, and on specified public and religious institution properties, when affordability thresholds are met.

The bill also requires most local governments to adopt ordinances allowing accessory dwelling units (ADUs) in single-family residential areas by December 1, 2026; revises affordable housing property tax exemption provisions; adds protection against discrimination based on affordable housing financing sources; and directs OPPAGA to study mezzanine financing and tiny homes as affordable housing tools.

For the City of Key West, the most significant issue is that the bill continues the Legislature's preemption of local land use authority in the affordable housing context, although the bill expressly excludes areas of critical state concern from the multifamily and mixed-use development mandate. That exclusion is especially relevant to Key West and the Florida Keys.

II. PRESENT SITUATION

Affordable Housing and Local Land Use Regulation Generally

Local governments currently regulate land use and housing through comprehensive plans, land development regulations, zoning districts, concurrency requirements, parking standards, height limitations, setbacks, and historic preservation regulations.

Under existing Live Local Act provisions, counties and municipalities must already authorize qualifying affordable housing developments in certain commercial, industrial, and mixed-use areas, subject to statutory criteria. Existing law also limits local discretion regarding density, height, and approvals for qualifying projects.

Local governments are presently authorized, but not generally required, to adopt ordinances allowing accessory dwelling units. Some jurisdictions allow ADUs broadly, while others limit them by zoning district, lot characteristics, owner-occupancy requirements, parking standards, or discretionary approval processes.

Key West Context

Key West is uniquely situated because it is within the Florida Keys Area of Critical State Concern. CS/CS/HB 1389 retains an exception providing that the multifamily and mixed-use residential development mandate does not apply in any area of critical state concern. This appears to preserve a significant measure of local land use authority for Key West with respect to that portion of the bill.

However, the bill's ADU provisions apply to local governments generally unless a jurisdiction is required by state law to limit the number of new dwelling units within its jurisdiction. That language may warrant legal review to determine the extent to which Monroe County and municipalities within the Florida Keys may qualify for the exception based on growth management limitations unique to the Keys.

III. EFFECT OF THE BILL

CS/CS/HB 1389 makes several substantive changes to affordable housing law affecting local governments.

Expanded Authorization for Affordable Multifamily and Mixed-Use Development

The bill amends sections 125.01055 and 166.04151, Florida Statutes, to require counties and municipalities to authorize multifamily and mixed-use residential development not only in areas zoned for commercial, industrial, or mixed use, but also on certain county, municipality, and school district owned property and on qualifying religious institution property exceeding three acres.

For mixed use residential projects, at least 65 percent of the total square footage must be residential, and a local government may not require more than 10 percent of the total square footage to be nonresidential.

The bill further limits local government authority by prohibiting requirements for zoning or land use changes, special exceptions, conditional uses, variances, transfers of density or development units, comprehensive plan amendments, and similar discretionary approvals for qualifying projects.

Effect: This provision broadens affordable housing entitlements under state law. However, the bill expressly excludes areas of critical state concern from these requirements. Because Key West is located within such an area, this portion of the bill may have limited direct applicability within the City, subject to legal confirmation.

Height, Setback, and Dimensional Preemptions

The bill revises how height limitations may be applied to qualifying affordable housing developments and restricts counties and municipalities from using setbacks to reduce height below what the statute authorizes.

In general, height may not be restricted below the highest currently allowed, or allowed on July 1, 2023, height for a commercial or residential building within one mile of the proposed development, or three stories, whichever is higher, subject to certain exceptions for adjacency to single family neighborhoods and historic properties.

For municipalities within an area of critical state concern, the bill includes specialized language on how a “story” is counted for qualifying developments adjacent to certain single-family residential areas, measuring habitable space above base flood elevation with specific height parameters.

Effect: Even where the area of critical state concern exemption limits the broader mandate, the bill signals continued state direction over development standards tied to affordable housing. The City should review its height, floodplain, and dimensional regulations in consultation with legal counsel and planning staff to determine whether any amendments or clarifications are needed.

Mandatory Accessory Dwelling Unit Ordinances

By December 1, 2026, local governments must adopt an ordinance allowing ADUs in areas zoned for single family residential use, approved without public hearing, variance, conditional use, special exception, or other discretionary action beyond site plan conformity with applicable zoning regulations.

The bill prohibits ADU ordinances from requiring owner occupancy in the primary dwelling unit, increasing parking requirements where a driveway can accommodate an additional vehicle, requiring replacement parking when a garage or carport is converted, or imposing discretionary review standards not applied generally to other housing in the same district.

The bill also removes the prior affidavit requirement that an ADU be rented at an affordable rate, preserves homestead eligibility for the primary dwelling unit, and requires a rented ADU to be separately assessed and taxed according to its use.

Effect: This provision may directly affect Key West unless the City qualifies for the statutory exception applicable to local governments required by state law to limit new dwelling units. If applicable, the bill would require amendment of the City’s land development regulations and could materially reduce local discretion over neighborhood compatibility, parking, and owner-occupancy standards.

Transitional Application Rights

Applicants who submitted qualifying affordable housing applications, written requests, or notices of intent before July 1, 2026, may elect to proceed under the prior version of the statute or revise their submissions to account for the act’s changes, and local governments must allow such revised submissions.

Effect: This may require administrative coordination by planning and legal staff to determine which statutory version governs pending or previously submitted applications.

Other Changes

The bill revises the affordable housing property tax exemption statute by defining “multifamily project,” modifies airport zoning applicability by requiring airport governing body approval in certain airport-affected areas, authorizes affordable housing land donation incentives for military families, expands fair housing protections related to financing sources, waives sovereign immunity for certain housing discrimination claims, and directs OPPAGA to study mezzanine financing and tiny homes.

Effect: Several of these provisions may have indirect implications for local administration, legal exposure, affordable housing incentives, and future legislative proposals.

IV. FISCAL IMPACT

Local Governments

Potential impacts include staff time and possible outside legal or planning assistance to review and amend land development regulations, zoning provisions, and permitting procedures; administrative review of pending or transitional applications; increased workload for planning, building, code compliance, and finance staff if ADU applications increase; possible ad valorem impacts associated with separately assessed rented ADUs; and potential indirect costs associated with litigation exposure under revised fair housing provisions.

Potential benefits could include expanded housing opportunities and greater private-sector production of affordable units without direct municipal subsidy.

City of Key West

Because Key West is within an area of critical state concern, the bill’s broader development preemptions may be partially limited in their application to the City. Even so, the ADU provisions and related implementation questions could still require legal analysis and potential code changes. The exact fiscal impact on the City is uncertain at this time.

State Government

The bill imposes administrative responsibilities on OPPAGA and may affect property tax administration and fair housing enforcement at the state and local level.

V. POLICY CONSIDERATIONS

Home Rule and Local Planning Authority

CS/CS/HB 1389 continues the Legislature’s trend of preempting local land use authority in the name of affordable housing production. Even with the area of critical state concern

exception, the bill reflects continued state encroachment into matters historically regulated by local governments.

Key West Growth Management and Area of Critical State Concern Issues

The explicit exception for areas of critical state concern is highly significant for Key West. However, the interaction between that exception and the bill's separate ADU mandate should be reviewed closely to determine whether the City retains discretion because of existing state-imposed growth limitations unique to the Florida Keys.

Infrastructure, Parking, and Neighborhood Compatibility

If the ADU mandate applies to Key West, implementation may raise concerns regarding parking, water and sewer capacity, stormwater, life-safety access, neighborhood intensity, and compatibility within established residential areas.

Historic and Floodplain Considerations

Because Key West contains historic districts and flood vulnerable areas, the bill's provisions related to height, historic properties, and measurement of stories above base flood elevation may require careful interpretation to avoid conflict with local historic preservation and resilience objectives.

VI. DRAFTING ISSUES OR AMBIGUITIES

The relationship between the area of critical state concern exemption and the bill's separate ADU mandate is not expressly resolved and may require legal interpretation.

The phrase exempting local governments "required by state law to limit the number of new dwelling units" may need clarification as applied to Monroe County and municipalities within the Florida Keys.

The bill may create implementation questions concerning how rented ADUs are separately assessed and taxed in practice.

The interaction between affordable housing preemptions and local historic preservation, floodplain management, airport zoning, and concurrency requirements may require further guidance.

The scope of potential municipal exposure under the revised fair housing and sovereign immunity provisions should be reviewed by legal counsel.

VII. EFFECTIVE DATE

The act takes effect July 1, 2026.

The ADU ordinance deadline is December 1, 2026.

OPPAGA's report is due by December 31, 2027.