



**AREA OF CRITICAL STATE CONCERN SB 1326  
AFFORDABLE HOUSING HB 995**

**HABITAT FOR HUMANITY EXEMPTION TO PURCHASE OF PERFORMANCE BONDS**

• **Request:** Support legislation to exempt Habitat for Humanity (HFH) from the requirement to purchase construction performance bonds for private, residential affordable housing developments constructed on 99-year leased County properties. This would help to significantly lower construction costs for affordable housing.

• **Goal:** The exemption would reduce costs and make affordable housing development more feasible in the Keys, supporting the continued growth of affordable homes for low-income residents.

• **Current Statutory Requirement:** Florida Statute Section 255.05 mandates performance bonds for public construction projects over \$200,000, which include public buildings or works for government entities or a private entity for a public works project involving the construction of, or repair to, a public building that serves a public purpose. The bonds are structured to ensure that contractors fulfill their contractual obligations, and further to ensure that subcontractors and suppliers are paid in full, by providing a means of payment as well as a cause of action.

A 2012 Attorney General Opinion (AGO 2012-12) addressed the need for performance and payment bonds when a private entity leases government-owned airport property to construct improvements. The opinion stated that the local government would own the improvements, thereby necessitating a bond under Section 255.05. Additionally, historical cases suggest that the Board of County Commissioners could be held personally liable for costs if a bond is required but not secured.

• **HFH's 99-Year Lease Model:** The Monroe County Land Authority purchases land, deeds it to the County, (holding a perpetual affordable deed restriction) and then County leases the land to HFH for 99 years for development of affordable housing. HFH for Humanity is a private entity that constructs private affordable housing (not public buildings) on these parcels; and all such construction is completed at the sole cost of HFH without any government funding or oversight. HFH is solely responsible for retention of all contractors, oversight of the construction, and for all financial aspects of the construction. Habitat sells each private home to qualifying low-income persons/families. Unlike a public building such as an airport, the general public does not have any right of entry into these residences and the homeowner maintains the sole benefit of the residence for the entirety of their ownership and any subsequent low-income qualifying homeowner.

• **Benefits Of This Model:**

1. **Cost Reduction:** The land cost is excluded from the home's price, making it more affordable.
2. **Long-Term Affordability:** The ground lease ensures that the homes remain affordable indefinitely, serving as a stronger protector of permanent affordability than deed restrictions.
3. **Unique Considerations for HFH:** The situation with HFH is atypical due to the 99-year leases. If the property were transferred outright, the bonding issue would not arise.

• **Impact of Performance Bonds:** Requiring performance bonds adds approximately \$10,000 to the cost of each home, making affordable housing development less feasible in the Florida Keys. The bonds are an unnecessary cost for HFH, which operates independently and uses private funds.

• **Exemption Proposal:** The proposed exemption would allow HFH and its contractors to forgo the bond requirement. This would reduce construction costs without eliminating the contractor's ability to pursue claims against HFH. The contractor and subs would still have the usual legal claims processes available to them, except for the option to make a claim against a performance bond.

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