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Builder decries new law

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A New York-based developer may mount a legal challenge against part of Florida's new growth-management law, arguing that it violates the U.S. Constitution.

The growth-management bill that Gov. Charlie Crist signed on Monday has drawn loud objections from environmentalists, who complain that it is a gift to developers. Now, however, a portion of the law is pitting developers against one another.

The 82-page law includes an affordable housing provision that gives Florida-based developers preferential treatment in the competition for federal tax credits. Norstar Development USA, a company based in Buffalo with offices in Tampa, claims that violates the interstate commerce clause of the Constitution.

Developers compete intensely for the roughly \$40 million in tax credits that Florida receives from the federal government each year to support affordable housing. The state distributes the credits through the Florida Housing Finance Corp., which scores each developer's application based on a lengthy list of criteria.

The new growth management law gives Florida-based developers preferential treatment by adding in-state domicile to the criteria for winning the credits. It also favors developers that have completed at least five affordable housing projects using money provided through the Florida Housing Finance Corp.

That likely will disqualify Norstar and at least a dozen other developers, said Paula Rhodes, Norstar project development manager for Florida.

"The fact that a development corporation and financial beneficiaries reside in Florida is really irrelevant to affordable housing," said Rhodes, who is a lawyer. "This is a federal program; all of the states do the program. So no matter where you have completed your projects, ... you're just as experienced."

Her company is weighing several options to challenge the legality of the provision but has not made any decision.

Wellington Meffert, counsel for the Florida Housing Finance Corp., said it did not request the bill language and realizes that it may be unconstitutional. The courts, he said, have been "all over the park" in their decisions on similar cases, so it is difficult to predict how they might interpret this one.

Senate sponsor Mike Bennett, R-Bradenton, added the language to the bill late in the spring session. It was a concession to the House, he said, which had included the provision in other legislation that was dying in the Senate.

Bennett said he frankly thinks that mandating preferential treatment for local business is problematic, but "we had our attorneys look at it; we felt this was something that was legal."

The senator said he had not heard about developers considering challenges, "but it doesn't surprise me. Anytime you're talking about money, someone will find a reason to object."