

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 161 Affordable Housing  
**SPONSOR(S):** Military & Local Affairs Policy Committee and Aubuchon  
**TIED BILLS:** **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Military & Local Affairs Policy Committee	13 Y, 0 N, As CS	Rojas	Hoagland
1)	Economic Development & Community Affairs Policy Council		Rojas	Tinker
2)				
3)				
4)				
5)				

### SUMMARY ANALYSIS

The CS/HB 161 substantially revises and updates numerous statutes which govern the implementation of various affordable housing practices and procedures statewide by the Florida Housing Finance Corporation (FHFC). The FHFC is the state entity primarily responsible for encouraging the construction of affordable housing in Florida.

The CS/HB 161 allows for the following:

- removes an exception to FHFC for the use of the state allocation pool to provide written confirmations for private activity bonds issued by state agencies,
- use of State Apartment Incentive Loans for moderate rehabilitation efforts,
- modifies the distribution of funds from the Local Government Housing Trust Fund by authorizing set-asides for specific purposes,
- revises requirements relating to local housing assistance plans,
- extends an exemption for Monroe County relating to income-restrictions for persons qualified to receive assistance under a local housing assistance plan,
- authorizes counties and eligible cities to award grants using funds distributed under the local housing assistance program,
- revises appointments to a local affordable housing advisory committee,
- limits the power of public housing authorities in certain circumstances,
- repeals statutory requirements relating to the distribution of funds remaining in the Local Government Housing Trust Fund after required distributions have been made,
- expands the uses of the local government infrastructure tax to be used for affordable housing, and
- directs FHFC to develop and administer the Florida Public Housing Authority Preservation Grant Program,
- directs FHFC to develop criteria for establishing a preference for developers and general contractors domiciled in Florida.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

#### **Mortgage Revenue Bond (MRB) Program**

##### Present Situation

Section 159.807(4), F.S., governs the State allocation pool and the MRB program. The pool is used to provide allocations for those portions of a bond that require allocations. Recently, the way the statute has implemented bond allocations for the FHFC for the past fifteen years has been called into question.

##### Effect of the bill

The change removes an exception to FHFC for the use of the state allocation pool to provide written confirmations for private activity bonds issued by state agencies. The change also provides that on or before November 15 of each year, FHFC access to the state allocation pool is limited to the amount of its initial allocation. Thereafter, FHFC may not receive more than 80 percent of the amount in the state allocation pool on November 16 of each year, and may not receive more than 80 percent of any additional amounts that become available during the remainder of the calendar year. The change in language is intended to make clear that the current implementation procedure used by FHFC is correct.

#### **Local Government Infrastructure Surtax Revenues Used to Benefit Affordable Housing**

##### Present Situation

Infrastructure is currently defined in statute as:

- Any fixed capital expenditure associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of 5 or more years and any land acquisition, land improvement, or design, including engineering costs.
- A fire department vehicle, an emergency medical service vehicle, a sheriff's office vehicle, a police department vehicle, or any other vehicle, and any necessary equipment to outfit the vehicle that has a life expectancy of at least 5 years.
- Any expenditure for the construction, lease, maintenance of, or the provision of utilities or security for, facilities as defined in s. 29.008, F.S.

- Any fixed capital expenditure associated with the improvement of private facilities that have a life expectancy of 5 or more years and that the owner agrees to make available for use on a temporary basis as needed by a local government as a public emergency shelter or a staging area for emergency response equipment during an emergency officially declared by the state or by the local government under s. 252.38, F.S.

#### Effect of the bill

Section 212.055, F.S., is amended to redefine the term “infrastructure” to allow proceeds of the local government infrastructure surtax to be used for a land expenditure acquisition for a housing project. At least 30 percent of the units must be used to provide affordable housing to individuals or families whose household income does not exceed 120 percent of the area median income.

### **FHFC Rules Direction**

The bill creates s. 420.507(47), F.S., which allows the FHFC to develop and administer the Florida Public Housing Authority Preservation Grant Program, a new program, aimed at preserving and rehabilitating public housing authority buildings that are 30 years or older. It directs the FHFC to establish criteria to prioritize grant expenditures to preserve and rehabilitate 30 year and older buildings and units under public housing authority control.

The bill also creates s. 420.507(48), F.S., which directs the FHFC to develop and administer rules, in connection with any FHFC competitive program, criteria establishing a preference for developers and general contractors based in Florida and for developers and general contractors, regardless of domicile, who have substantial experience in developing or building affordable housing through the corporation’s programs.

### **State Apartment Incentive Loan (SAIL) Program**

The SAIL Program annually provides low interest loans on a competitive basis to affordable housing developers.

#### Effect of the bill

**Section 420.503, F.S.:** Creates a new definition for moderate rehabilitation, to allow SAIL funds to be used to preserve units that are less deteriorated than those requiring “substantial rehabilitation.” The definition limits costs of at least \$10,000 but no more than 40% of unit value.

**Section 420.5087(6)(c)12., F.S.:** Adds sponsor's prior experience, including whether the developer and general contractor have substantial experience, as provided in s. 420.507(47), as criteria to be considered by FHFC in its scoring and competitive evaluation of applications for funding under the SAIL program.

**Section 420.5087(6)(c)16., F.S.:** Adds green building principles, storm resistant construction, or other elements that reduce long-term costs relating to maintenance, utilities, or insurance as criteria to be considered by FHFC in its scoring and competitive evaluation of applications for funding under the SAIL program.

**Section 420.5087(6)(c)17., F.S.:** Adds domicile of the developer and general contractor, as provided in s. 420.507(47) as criteria to be considered by FHFC in its scoring and competitive evaluation of applications for funding under the SAIL program.

**Section 420.5087(6)(l), F.S.:** Expands the use of SAIL funds to allow moderate rehabilitation and preservation of existing affordable units.

### **Affordable housing land donation density bonus incentives**

Section 420.615, F.S., provides that local governments may provide density bonus incentives to landowners who donate property for the purpose of assisting local governments in providing affordable housing. Donated

property is subject to a determination by the local government for suitable use as affordable housing. The local approval includes amending the comprehensive plan under Ch. 163, F.S.

The Department of Community Affairs has argued that this provision of law is not clear enough to treat these density bonuses as a small scale amendment. As a result, confusion at the local level persists, creating a chilling effect on affordable housing donation agreements. The change in language provides clarity that the density bonuses received by a landowner as a result of a land donation for affordable housing is a small scale amendment.

### **Affordable Housing for Children and Young Adults Leaving Foster Care**

#### **Present Situation**

FHFC has collaborated with the Department of Children and Family (DCF) and child welfare stakeholders, including the Guardian ad Litem program and advocates, to expand the opportunities for supported housing for youth transitioning out of foster care. Former foster youth face challenges locating affordable and safe housing due to limited financial resources, limited availability of apartments or homes, and limited or non-existent family support. Some former foster youth become homeless as a result. The dire need for housing resources and services has been recognized at the national level as well. Recent federal legislation, the Housing and Economic Recovery Act of 2008, provides for former foster youth that are full-time students to be eligible for housing credit apartments. The availability of tax credits for housing developers provides the opportunity for youth to obtain reduced rental rates. DCF will continue to collaborate with the Florida Housing Finance Corporation to ensure the most effective implementation of limited housing resources for young adults formerly in foster care.

#### **Effect of the bill**

The bill creates s. 420.628, F.S., which qualifies children and young adults leaving foster care under statute as eligible persons for consideration for affordable housing assistance. The bill also provides guidance to the FHFC in developing and implementing strategies for establishing a suitable transition for those leaving foster care. In addition, it requires coordination among child welfare and housing agencies to make housing available wherever possible. DCF suggests that the removal of barriers and increased access to supported housing will impact this population in a substantially positive manner by aiding them to complete their educations, sustain employment, reduce at-risk behaviors and provide the needed safety net to transition to adulthood and self-sufficiency.

### **State Housing Initiatives Partnership Act (SHIP) Statutory Definitions**

The SHIP Program provides funds to cities and counties as an incentive to create local housing partnerships and to preserve and expand production of affordable housing.

#### **Present Situation**

Under current law s. 420.503, F.S., establishes general definitions relating to the FHFC and s. 420.9071, F.S., establishes numerous statutory definitions for the implementation of the SHIP Act by the FHFC. The SHIP program provides funds to local governments on a population-based formula as an incentive to produce and preserve affordable housing.

#### **Effect of the bill**

The bill makes the following changes to the statutory definitions:

**Section 420.9071 (4), F.S.:** Updates the definition of “Annual gross income.” The change would allow FHFC by rule, to approve additional income verification methods consistent with verification methods currently utilized in the lending industry.

**Section 420.9071 (8), F.S.:** Updates the definition of “Eligible housing” to include manufactured homes that meet the standards of the Florida Building Code or predecessor building codes or manufactured housing constructed after 1994. Following the Hurricane Housing Work Group’s recommendation in 2005, FHFC used

Hurricane Housing Recovery Program funds for manufactured housing assistance. Since 2006, the Community Workforce Housing Innovation Pilot Program ("CWHIP") has included language identical to this.

**Section 420.9071 (16), F.S.:** Changes the definition of "Local housing incentive strategies" to allow the affordable housing advisory committee to propose additional incentive strategies for the local housing assistance plan.

**Section 420.9071 (25), F.S.:** Revises the definition of "Recaptured funds" to clarify the difference between recapture and program income. Currently, funds are categorized as recaptured when there is a default on a loan. The change would clarify that funds are only designated as recaptured when no eligible unit is assisted with the funds being recaptured. This also would allow FHFC to track the use of funds more accurately.

**Section 420.9071(29), F.S.:** Creates new subsection to define "Assisted housing," as housing that receives funding from any federal or state housing program.

**Section 420.9071(30), F. S.** Creates new subsection to define "Preservation," to categorize actions taken to keep rents affordable in existing assisted housing while ensuring that units remain in good physical condition.

### **Local Housing Distributions of SHIP Funding**

#### **Present Situation**

Under current law s. 420.9073, F.S., establishes the criteria and manner of local housing distributions of the SHIP Act by the FHFC.

#### **Effect of the bill**

The bill makes the following changes regarding the distribution of SHIP funds:

**Section 420.9073 (1) and (2), F.S.:** Allows FHFC to distribute funds on a quarterly basis rather than a monthly basis subject to availability. The change would allow FHFC to distribute funds to local governments consistent with the schedule for release of funds by the state to FHFC.

**Section 420.9073 (5), F.S.:** Allows FHFC to set aside \$5 million each year in SHIP funds to fund disaster needs based on damage and recovery need. This change will allow FHFC to reserve funds to allocate to local governments for the purpose of quickly addressing housing needs in areas that are affected by a disaster situation as declared by the Governor. Funds not used for this purpose will be distributed to the local governments by the end of the year.

**Section 420.9073 (6), F.S.:** Allows FHFC to set aside up to \$5 million each year in SHIP funds for local governments to purchase homes which have existing SHIP subsidies and that are subject to foreclosure. This change will allow for such homes to be resold through the SHIP program. The proposed statutory language provides options for how the local government using this fund will repay funds used for this purpose so that no local government will receive additional SHIP funds beyond their annual allocation. This pool would allow local governments that have already encumbered all current funds to move quickly in a foreclosure situation. Funds not used for this purpose will be distributed to the local governments by the end of the year.

**Section 420.9073 (7), F.S.:** Clarifies that all counties or municipalities receiving SHIP funds must comply with Florida law, program rules, and the local housing assistance plan.

### **Development and Implementation of Local Housing Assistance Plans**

#### **Present Situation**

Under current law, s. 420.9075, F.S., requires counties and eligible municipalities participating in the SHIP program to develop and implement a local housing assistance plan to make available affordable residential units to specified persons.

Additionally, s. 420.9076, F.S., requires counties and eligible municipalities participating in the SHIP program, after adopting a local housing assistance plan pursuant to s. 420.9075, F.S., to amend that plan within 12 months to include local housing incentive strategies.

#### Effect of the bill

The bill makes the following changes to local housing assistance plans:

**Section 420.9075(1)(a) and (5)(d), F.S.:** Allows local governments to increase the area median income (AMI) limit on households served from 120% to 140% for areas determined by FHFC rule to be “high cost” areas. This change allows local governments to serve workforce households in areas where the cost of housing is above the state median pricing. As of 2008, high cost counties as defined by FHFC were Miami-Dade, Monroe, Palm Beach, Martin and Collier counties. At this time, it is unclear how the current decline in housing prices will affect the eligibility criteria for “high cost”.

**Section 420.9075(3)(d), F.S.:** Requires local governments to state in their local housing assistance plans how they plan to address innovative design, green building, storm resistant construction and other elements that reduce long term costs. This change requires that local governments consider how current and emerging building and design techniques should be integrated into affordable housing strategies both for sustainability and to promote greater affordability.

**Section 420.9075(3)(e), F.S.:** Creates new paragraph (e) to encourage local governments to develop preservation strategies within local housing assistance plans.

**Section 420.9075(5)(c), F.S.:** is created and limits the expenditure of SHIP funds on manufactured housing to 15 percent.

**Section 420.9075(5)(d), F.S.:** is renumbered and extends income restriction exemption requirements for Monroe County. As an area of critical state concern where the Legislature has declared its intent to provide affordable housing, Monroe County, has been exempted from the statutory reservation of SHIP funds specifically for low-income and very-low-income persons, allowing funding to households at or below 120% of Average Median Income. This exception expired July 1, 2008; this would extend the exemption to July 1, 2013, based on continuing high housing costs relative to incomes and allow for retroactive applicability dating back to July 1, 2008.

**Section 420.9075(5), F.S.:** Clarifies and outlines the parameters in which funds may be awarded as grants rather than loans: most SHIP funding is now provided in the form of loans including deferred payment and forgivable loans. This change clarifies when a local government can grant SHIP funds without any terms for repayment or recapture. This change will increase the amount of funds recycled through SHIP to assist additional households. The bill also provides in this section that funding for preconstruction preservation activities and that under certain circumstances such funds shall not be considered as administrative expenses.

**Section 420.9075(10)(a), F.S.:** Adds “persons with disabilities” to the list of demographics that must be tracked by the local governments. This change allows FHFC to track the number of households with a person with a disability which are served through the SHIP program.

**Section 420.9075(10)(h), F.S.:** Revises language to allow FHFC to require the tracking of additional program information by the local governments as necessary. This change adapts annual reporting requirements to allow FHFC to supply additional data needed to provide information on the performance of the program.

**Section 420.9075(14), F.S.:** Requires repayment of SHIP funds if these funds are found to be expended on ineligible activities. This change would give FHFC the ability to require that funds found to be used for ineligible expenditures be repaid by the local government to the local program’s affordable housing trust fund.

**Section 420.9076(2)(h), F.S.:** Allows a local government to appoint a “designee” to its affordable housing advisory committee in place of the Local Planning Agency (LPA) committee member in cases where the elected body acts as the LPA. This change would allow for circumventing conflicts where the LPA is the elected body of the local government.

**Section 420.9076(5) and (6), F.S.:** Amends language concerning the affordable housing advisory committee reporting requirements. This change clarifies that the committee's evaluation and report must be adopted by the committee, must contain a summary, be available for the public to obtain, and be submitted to FHFC.

### **Distribution of excess funds in the Local Government Housing Trust Fund**

#### **Present Situation**

Section 420.9078, F.S., establishes criteria and methodology for the distribution of funds that remain in the Local Government Housing Trust Fund.

#### **Effect of the bill**

The deletion of s. 420.9078, F.S., is tied to the implementation of s. 420.9073 (5), F.S., which will allow FHFC to set aside \$5 million each year to fund disaster needs based on damage and recovery need. This change will allow FHFC to reserve funds to allocate to local governments to quickly address housing needs in areas that are affected by a disaster situation as declared by the Governor.

### **School Board Use of Surplus Land for Affordable Housing in Areas of State Critical concern**

Section 1001.43, F.S., allows that district school boards are empowered to exercise a number of supplemental powers and duties as authorized by statute or State Board of Education rule. The bill amends s. 1001.43 (12), F.S., to allow school boards in areas deemed by the legislature to be areas of critical state concern to utilize surplus land for affordable housing for teachers and other essential services personnel, such as fire, police and health care workers as defined by local affordable housing plans.

#### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 159.807, F.S., to clarify the non-taxable revenue bond allocation process.

**Section 2:** Amends w. 212.055, F.S., to expand the uses of the local government infrastructure tax.

**Section 3:** Amends s. 420.503, F.S., to create a definition of "moderate rehabilitation".

**Section 4:** Creates subsection 420.507(47)-(48), F.S., created to allow the FHFC to develop and administer the Florida Public Housing Authority Preservation Grant Program and criteria for establishing a preference for developers and general contractors domiciled in Florida.

**Section 5:** Amends s. 420.5087, F.S., to allow use of SAIL funds for moderate rehabilitation and preservation of existing affordable units. Creates s. 420.5087(16), F.S., to add Green-building practices to scoring system for distribution of SAIL funds.

**Section 6:** Amends s. 420.615, F.S., to specify process relating to density bonuses.

**Section 7:** Creates s. 420.628, F.S., to address affordable housing for persons leaving foster care.

**Section 8:** Amends s. 420.9071(4), (8), (16), and (25), and creates (29) and (30) F.S., addressing select definitions of the State Housing Initiative Partnership Act

**Section 9:** Amends s. 420.9072(6), F.S., conforming cross-reference.

**Section 10:** Amends s. 420.9073, F.S., revising the criteria and manner of local housing distributions of the State Housing Initiatives Partnership Act by the FHFC.

**Section 11:** Amends s. 420.9075, F.S., revising local housing assistance plan requirements for counties and eligible municipalities participating in the State Housing Initiatives Partnership program.

**Section 12:** Amends s. 420.9076, F.S., revising requirements for counties and eligible municipalities participating in the SHIP program. This change requires local governments after adopting a local housing assistance plan pursuant to s. 420.9075, F.S., to amend that plan within 12 months to include local housing incentive strategies.

**Section 13:** Repeals s. 420.9078, F.S., which directs the state administration of remaining local housing distribution funds.

**Section 14:** Amends s. 420.9079, F.S., conforming references.

**Section 15:** Amends s. 1001.43(12), F.S., to allow Areas of Critical State Concern to use surplus land for housing for teachers and other essential services personnel.

**Section 16:** Provides an effective date of July 1, 2009 except as otherwise provided.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None

#### **2. Expenditures:**

None

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None

#### **2. Expenditures:**

None

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Residents living in high-cost counties who have an annual income of not more than 140 percent of the area median income may be eligible for homeownership assistance through a local government's local housing assistance plan. Residents who purchase manufactured homes constructed after June 1994 or installed according to the standards of the Department of Highway Safety and Motor Vehicles will be eligible for assistance under the SHIP program so long as they are assessed as real property for ad valorem tax purposes.

### **D. FISCAL COMMENTS:**

None

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

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1. Applicability of Municipality/County Mandates Provision:

N/A

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill creates subsections (47) and (48) of s. 420.507, F.S. which directs the FHFC to establish criteria to prioritize grant expenditures to preserve and rehabilitate 30 year and older buildings and units under public housing authority control and criteria for establishing a preference for developers and general contractors domiciled in Florida.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 18, 2009, HB 161 was amended in the Military & Local Affairs Policy Committee upon adoption of a proposed committee substitute. The analysis reflects the bill as amended.