HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #:	CS/CS/HB 437	**FINAL HOUSE FLOOR ACTION:**	
SPONSOR(S):	Economic Affairs Committee and Finance & Tax Subcommittee and Davis and Renuart and others	113 **Y's**	0 **N's**
COMPANION BILLS:	(CS/CS/SB 1928, HB 921, CS/HB 7159, SB 740, SB 1830)	**GOVERNOR'S ACTION:**	Approved

SUMMARY ANALYSIS

CS/CS/HB 437 passed the House on April 24, 2013, and subsequently passed the Senate on April 26, 2013. The bill amends provisions relating to the Florida Housing Finance Corporation (FHFC), housing finance authorities, and the affordable housing property exemption.

The bill clarifies the process used by the FHFC to allocate low-income housing tax credits and other federal and state resources. The bill modifies the annual reporting requirements, clarifies the information and reports included in the FHFC's audited financial statements, and removes obsolete terms and provisions.

The bill revises the definition of a "qualifying housing development" and changes the loan-making eligibility parameters of Housing Finance Authorities. It also repeals the Housing Opportunity for People Everywhere program, which has been declared inactive by the U.S. Department of Housing and Urban Development and has not been federally funded since 1995.

The bill removes the provision authorizing the affordable housing property exemption to apply to affordable housing owned by a Florida-based limited partnership whose sole general partner is a not for profit corporation qualified as charitable under the Internal Revenue Code. The bill also makes technical corrections to the amended provision. The removal of such authority is effective upon becoming a law and applies to the 2013 ad valorem tax rolls.

The Revenue Estimating Conference estimated the provisions of section 3 of the bill relating to the affordable housing property exemption will have a positive impact on local government revenue in FY 2013-2014 of $23.4 million ($117.2 million recurring). The bill does not have a fiscal impact on state government revenues.

The bill was approved by the Governor on May 30, 2013, ch. 2013-83, L.O.F., and will become effective on July 1, 2013, except as otherwise provided.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Florida Housing Finance Corporation

The Florida Housing Finance Corporation (FHFC) [1] is the state entity primarily responsible for encouraging the investment of private capital in residential housing and stimulating the construction and rehabilitation of affordable housing in Florida.[2] Originally, federal funds were the only resources that funded housing programs administered by the FHFC. To leverage these federal funds, in the late 1980s the Legislature appropriated funding for state programs. The FHFC administers a number of multifamily and single family housing programs, such as the State Apartment Incentive Loan Program, Florida Affordable Housing Guarantee Program, and the First Time Homebuyer Program, that assist Floridians in obtaining safe, decent affordable housing.

Chapter 2012-127, Law of Florida – Audit and Review of the FHFC

In 2012, the Legislature directed the Auditor General and the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct a joint audit and review of the programs and operations of the FHFC and to submit written reports to the Legislature no later than December 1, 2012. [3] Both reports were issued November 2012. The Auditor General's report addressed the FHFC's internal management and financial and operational controls and included recommendations. OPPAGA's report examined the corporation's governance structure, decision-making, and performance and identified areas for improvement.

Included in the Auditor General's report was the recommendation that the FHFC revise its travel policy to conform to the requirements of state law. The report also recommended that s. 420.511(4), F.S., relating to the annual financial audit, be revised to identify the specific programs that should be subject to an annual compliance audit.[4] Additional findings recommended the FHFC modify internal operations and/or procedures and did not require statutory modifications. The FHFC has either further explained the rationale for its operating procedures or has agreed with and adopted the Auditor General's recommendations.[5]

OPPAGA's report examined the FHFC's governance structure, decision-making, and performance and identifies areas for improvement.[6] OPPAGA's report summary stated:

> The Florida Housing Finance Corporation's board and executive director, the Governor, and the Legislature have roles in overseeing and directing corporation programs and staff. We found no compelling reason to change the current governance structure. However, to expand its role and enhance communication with the corporation, the Legislature could consider amending state law to provide for board appointments by the President of the Senate and the Speaker of the House of Representatives.

[1] The Florida Housing Finance Corporation (FHFC) was created as a public corporation within the Department of Economic Opportunity (DEO). However, the FHFC is a separate budget entity and is not subject to the control, supervision, or direction of DEO. Section 420.504, F.S.

[2] Section 420.502(7), F.S.

[3] Section 3, ch. 2012-127, L.O.F.

[4] State of Florida, Auditor General, *Florida Housing Finance Corporation – Audit Performed Pursuant to Chapter 2012-127, L.O.F.*, Report No. 2013-047, November 2012, *available at* http://www.myflorida.com/audgen/pages/pdf_files/2013-047.pdf.

[5] *Id*.

[6] The Florida Legislature, Office of Program Policy Analysis and Government Accountability, *The Florida Housing Finance Corporation Could Improve Its Tax Credit Allocation Process and Develop Better Performance Measures*, November 2012, Report No. 2012-10, available at http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1210rpt.pdf.

A major focus of the corporation's decision making is distributing federal low-income housing tax credits for affordable rental housing developments. To address concerns about the process, we suggest that the corporation consider reducing the frequency of rule development workshops; revising the time allowed for applicants to identify problems with each other's projects; and increasing the emphasis on considering market feasibility and project costs.

Most of the corporation's performance measures provide information on program outputs rather than program outcomes or cost-effectiveness. To enhance the quality and utility of the data the corporation reports, the Legislature could consider expanding the statutorily required performance measures.[7]

FHFC Powers Related to the Allocation of Low-income Housing Tax Credits, the State Apartment Incentive Loan Program, and Other Federal or State Resources

Florida law grants the FHFC specific powers necessary to carry out activities or implement programs to provide affordable housing.[8] Included in such authority is the FHFC's power to use up to 10 percent of its annual allocation of low-income housing tax credits, nontaxable revenue bonds, and State Apartment Incentive Loan Program (SAIL)[9] funds appropriated by the Legislature for high-priority affordable housing projects. FHFC may allocate available funds by requests for proposals or other competitive solicitation for high-priority affordable housing projects, such as housing to support economic development and job-creation initiatives, housing for veterans and their families, and other special needs populations as determined by the FHFC on an annual basis.[10]

Additionally, the Legislature has granted authority to the FHFC to establish, by rule, the procedure for evaluating, scoring, and competitively ranking all applications based on the criteria established under the SAIL Program.[11]

Process for Awarding Low-Income Housing Tax Credits and Other Funds

Currently, the FHFC allocates tax credits through a Universal Application Cycle that includes the allocation of other federal and state resources, depending on the availability of funds. In recent years, tax credits have provided the bulk of resources for rental housing developments.[12] In an effort to achieve transparency in the awarding of the federal low-income housing tax credits, the FHFC's process has become cumbersome and lengthy. According to the FHFC and documented by OPPAGA, the FHFC's process to allocate low-income housing tax credits occurs in four stages: rulemaking, application, underwriting, and construction and closing. For the last two cycles (2009 and 2011), the time taken to complete the process from the first rule development workshop hearing to the approval of final project rankings ranged from 12 to 14 months.[13] After the FHFC's Board of Directors approves final project rankings, developers are invited to credit underwriting, which can take an additional nine months.[14] The lengthy process increases the costs for both the FHFC and developers. Additionally, some stakeholders like the FHFC's open and transparent rulemaking and application process. However, others are concerned about the complexity of the process.[15]

FHFC Reporting Requirements: Business Plan, Strategic Plan, and Annual Report

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[7] *Id*. at 1.
[8] *See* ss. 159.608 and 420.507, F.S.
[9] The SAIL Program annually provides low interest loans on a competitive basis to for-profit, nonprofit, and public entities to provide affordable housing to very-low-income persons. Program funds provide gap financing to allow developers to obtain the full financing needed to construct multifamily units. Special consideration is given to properties that target specific demographic groups such as the elderly, the homeless, families, and commercial fishing workers and farmworkers. Section 420.5087, F.S.; Florida Housing Finance Corporation, *A Summary of Florida Housing's Programs*, *available at* http://www.floridahousing.org/FH-ImageWebDocs/AboutUS/ProgramSummaries.pdf.
[10] Section 420.507(48), F.S.
[11] Section 420.507(22), F.S.
[12] *Supra* note 6 at 5.
[13] *Id*. at 6
[14] *Id.*
[15] *Id.* at 7.

The FHFC is required to develop a business plan for the provision of affordable housing in the state. The business plan must be consistent with the strategic plan[16] and must contain certain performance measures and specific performance targets.[17] A strategic plan for the provision of affordable housing relating to the state and regional planning requirements in chapter 186, F.S., is required to be developed annually, in equal partnership with DEO.

The FHFC is also required to submit to the Governor and the Legislature, within 2 months after the end of its fiscal year, a complete and detailed report, which provides the following information:[18]

- Operations and accomplishments.
- Receipts and expenditures during its fiscal year in accordance with the categories or classifications established by the FHFC for its operating and capital outlay purposes.
- Assets and liabilities at the end of its fiscal year and the status of reserve, special, or other funds.
- A schedule of its bonds outstanding at the end of its fiscal year, together with a statement of the principal amounts of bonds issued and redeemed during the fiscal year.
- Information relating to the FHFC's activities in implementing the SAIL Program, the Florida Homeownership Assistance Program (HAP),[19] and the Community Workforce Housing Innovation Pilot Program.[20]

The report must include, but not be limited to:[21]

- The number of people served, delineated by income, age, family size, and racial characteristics.
- The number of units produced under each program.
- The average cost of producing units under each program.
- The average sales price of single-family units financed under the Florida Homeownership Assistance Program.
- The average amount of rent charged based on unit size on units financed under the SAIL Program.
- The number of persons in rural communities served under each program.
- The number of farmworkers served under each program.
- The number of homeless persons served under each program.
- The number of elderly persons served under each program.
- The extent to which geographic distribution has been achieved in accordance with the provisions of the SAIL Program.

[16] "Strategic plans" in ch. 186, F.S., were renamed "long-range program plans" pursuant to ch. 2000-371, L.O.F. Each state agency is required to develop a long-range program plan on an annual basis. The plan must provide the framework and context for designing and interpreting the agency budget request. The plan will be developed through careful examination and justification of agency functions and their associated costs. It must be used by the agency to implement the state's goals and objectives. Indicators must be developed to measure service and activity performance. *See* s. 186.021, F.S.
[17] Section 420.511(1), F.S.
[18] Section 420.511(3)(a), F.S.
[19] *See* s. 420.5088, F.S.
[20] *See* s. 420.5095, F.S.
[21] Section 420.511(3)(b), F.S.

- The success of the Community Workforce Housing Innovation Pilot Program in meeting the housing needs of eligible areas.
- Any other information the FHFC deems appropriate.

The FHFC must also submit a copy of an annual financial audit of its accounts and records and an annual compliance audit of its programs conducted by an independent certified public accountant performed in accordance with generally accepted auditing standards and government auditing standards.[22] Both FHFC's business plan and annual report must recognize the different fiscal periods under which the FHFC, the state, the Federal Government, and local governments operate.[23]

Affordable Housing Funding Programs Serving Persons and Households with Special Needs

Applicants requesting tax credits from FHFC are offered incentives to set aside 10 percent of the total units for which they are applying for extremely low-income (ELI) households.[24] Through its Link Initiative, FHFC requires applicants to commit to reserving 50 percent of those ELI units for special needs households, defined as households consisting of homeless families, survivors of domestic violence, persons with a disability, or youth aging out of foster care.[25] Upon the awarding of a tax credit, a developer selects a special needs population to serve and contacts a FHFC sanctioned referral agency listed for that population. The referral agency ensures that special needs households targeted for the units are receiving community based supportive services, prepared to live in an independent living environment, and are able to pay the determined rent and other costs for the available unit.

HOPE Program

The Homeownership and Opportunity for People Everywhere (HOPE) program was created in 1990 by the Cranston-Gonzalez National Affordable Housing Act to help low-income people buy public housing units by providing funds that nonprofit organizations, resident groups, and other eligible grantees can use to develop and implement homeownership.[26] One part of this program provided funds through an annual national competition to provide for conversion of federally subsidized rental units and abandoned and vacant multifamily properties into home ownership units to be sold to very-low-income and low-income households. A 33 percent match of the federal funds was required to be provided by state or local government. Chapter 92-317, L.O.F., established the HOPE Program in s. 420.5091, F.S., and authorized the FHFC to promulgate rules for the funding match. According the U.S. Department of Housing and Urban Development (HUD) the HOPE program has not been funded since 1995 and appears on HUD's list of inactive programs.[27]

<u>Housing Finance Authorities and Federal Low-Income Housing Credit</u>

Housing Finance Authorities

Each county in Florida may create by ordinance a Housing Finance Authority (HFA) of the county to carry out the powers granted by the Florida Housing Finance Authority Law.[28] An HFA is composed of not less than five uncompensated members appointed by the governing body of the county.[29] The powers of a HFA are vested in the members and include the power to loan funds to persons purchasing homes and to developers engaged in qualifying housing developments. Persons are eligible for loans if

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[22] Section 420.511(4), F.S.
[23] Section 420.511(5), F.S.
[24] Florida Housing Finance Corporation, *Special Needs Housing Website, Link Initiative*, *available at* http://www.floridahousing.org/SpecialNeeds/ContentPage.aspx?PAGE=Link Initiative Page (last visited April 3, 2013).
[25] Section 420.0004, F.S.
[26] *See* United States Department of Housing and Urban Development, *HOPE VI*, *available at* http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/hope6 and Florida Housing Finance Corporation Staff Document (Mar. 11, 2013) (on file with the Economic Development & Tourism Subcommittee).
[27] U.S. Department of Housing and Urban Development, Programs of HUD, *Inactive Programs*, *available at* http://portal.hud.gov/hudportal/HUD?src=/hudprograms/inactive_programs (last visited April 3, 2013).
[28] Section 159.604, F.S.
[29] Section 159.605, F.S.

their annual income does not exceed 80 percent of the median income for the county. The sale price on new or existing single-family homes shall not exceed 90 percent of the median area purchase price in the area.[30]

HFA Qualifying Housing Developments

HFA housing developments are deemed "qualifying" if they provide residential housing for four or more families, at least 60 percent of whom are eligible persons.[31] Eligible persons are those determined by the HFA to be of low, moderate, or middle income and may include people earning up to 150 percent of the state or county median family income levels. In determining the income standards of eligible persons, an HFA may consider requirements mandated by federal law.

Federal Low-Income Housing Credit: 42(g) Internal Revenue Code

The internal revenue code on low income housing credit defines "qualified low-income housing project" to mean any project for residential rental property if:

- 20 percent or more of the units in the project are both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income (20-50 test).
- 40 percent or more of the units in the project are both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income (60-40 test).[32]

Affordable Housing Property Exemption

In 1999,[33] the Legislature authorized property owned entirely by a not for profit corporation and used to provide affordable housing through any state housing program under chapter 420, F.S., and serving low-income and very-low-income persons, to be considered property as owned by an exempt entity used for charitable purpose and exempt from ad valorem taxation. The not for profit corporation must qualify as charitable under s. 501(c)(3) of the Internal Revenue Code and other federal regulations.

In 2009,[34] and later reenacted in 2011,[35] the Legislature expanded the affordable housing property exemption to apply to property owned entirely by a not for profit corporation, or a Florida-based limited partnership whose sole general partner is a not for profit corporation. The not for profit corporation must qualify as charitable under s. 501(c)(3) of the Internal Revenue Code. Any property owned by a limited partnership which is disregarded as an entity for federal income tax purposes is treated as if owned by its sole general partner.

The unintended effect of the expanded provision is that an affordable housing (i.e., low income housing tax credit) development with a nonprofit general partner can claim a tax exemption even though the limited partnership that owns the property is a for-profit corporation. While the provision may be beneficial to non-profit developments, the provision may also be misused if a for-profit developer uses a compliant non-profit, which has no significant role in the development's construction or operations, to gain the tax exemption.

Effect of Proposed Changes

Florida Housing Finance Corporation

The bill removes the FHFC's authority to establish a procedure for evaluating, scoring and competitively ranking applications for funding. Thus, the FHFC would have the flexibility to modify its process of competitively evaluating and selecting applications for funding.

[30] Section 159.608, F.S.
[31] Sections 159.603(6) and (7), F.S.
[32] 26 U.S.C. s. 42(g), *available at* http://www.law.cornell.edu/uscode/text/26/42 (last visited April 3, 2013).
[33] Section 15, ch. 99-378, L.O.F., codified at s. 196.1978, F.S.
[34] Section 18, ch. 2009-96, L.O.F., amending s. 196.1978. F.S.
[35] Section 4, ch. 2011-15, L.O.F., reenacting s. 196.1978, F.S.

Current law authorizes the FHFC to use up to 10 percent of its annual allocation of low-income housing tax credits, nontaxable revenue bonds, and SAIL funds appropriated by the Legislature for high-priority affordable housing projects. However, the FHFC does not always receive an annual allocation of these funds. For example, the most recent appropriation of SAIL funds occurred in FY 2008-09. Therefore, the bill modifies this provision to clarify that the FHFC has the authority to reserve up to 10 percent of each allocation of low-income housing tax credits, nontaxable revenue bonds, and SAIL funds for high-priority affordable housing projects.

The 10 percent annual allocation is split into two pools. Five percent would continue to be reserved for projects that support economic development and job-creation initiatives, housing for veterans and their families, and other special needs populations. The other five percent would be reserved for projects that target persons who have a disabling condition and their families. These allocations must prioritize projects or initiatives piloting or demonstrating cost-effective, best practices that meet the housing needs and preferences of such persons. Any tax credits or funds not allocated because of a lack of eligible projects targeting persons who have a disabling condition must be distributed by the FHFC for high-priority housing projects.

The bill authorizes the FHFC to adopt rules making it a priority to fund affordable housing projects in the Florida Keys Area of Critical State Concern and the City of Key West Area of Critical State Concern. The challenging environmental, land use, transportation, workforce, and economic factors in these areas make it difficult to successfully finance, develop, and construct affordable housing.

Business Plan and Long-Range Program Plan

The business plan is renamed the strategic business plan, which must be consistent with the long-range program plan. Currently, as part of the business plan, the FHFC must compile data on the stimulus of economic activity created by the affordable housing finance programs administered by the FHFC. This information is removed from the business plan and included in the annual report.

Annual Report

The annual report is revised to require the following tenant characteristics for existing rental units financed through all programs administered by the FHFC be included in the annual report:

- The number of households served, delineated by income, race, ethnicity, and age of the head of the household.
- The number of households served in large, medium, and small counties as defined pursuant to the SAIL Program[36] and the extent to which geographic distribution has been achieved.
- The number of farmworkers and commercial fishing worker households served.
- The number of homeless households served.
- The number of special needs households served.
- The average rent charged based on unit size reported by county.

The required tenant characteristics are required to be captured by household rather than by persons. According to the FHFC, housing need and supply data is collected on the national level by household and collecting such data by household would permit the FHFC to conduct a more accurate comparison and analysis of its programs and activities.

The annual report must also include:

[36] The SAIL Program defines counties as follows: counties that have a population of 825,000 or more; counties that have a population of more than 100,000 but less than 825,000; and counties that have a population of 100,000 or less. *See* s. 420.4087, F.S.

- The estimated average cost of producing units under each rental or homeownership unit financed under each program in the last fiscal year. Currently, this information is only provided for the SAIL and HAP Programs.
- The number of rental units to which resources have been allocated in the last fiscal year, including income and demographic restrictions.
- By county, the average sales of homeownership units financed in the last fiscal year. Currently, this information is only provided for the HAP Program.
- The number of households served by homeownership programs in the last fiscal year, including the income, race, ethnicity, and age of the homeowner of each household.
- The percentage of homeownership loans that are in foreclosure.
- The percentage of properties in the FHFC's rental portfolio which have an occupancy rate below 90 percent.
- The amount of economic stimulus created by the affordable housing finance programs administered by the FHFC for the most recent year available. This information was originally included the FHFC's business plan.
- For the SAIL Program, a comprehensive list of all closed loans outstanding at the end of the most recent fiscal year, including, but not limited to, the development's name and location, developer's name, set-aside type, set-aside percentage, affordability term, total number of units, number of set-aside units, lien position, original loan amount, loan maturity date, loan balance at the close of the year, loan status, rate of interest, and interest paid.
- For the Affordable Housing Guarantee Program, a list of all guaranteed loans through the close of the most recent fiscal year, including, but not limited to, the development's name and location, developer's name, total number of units, issuer of the bonds, loan maturity date, participation in the U.S. Department of Housing and Urban Development Risk-Sharing Program, original guarantee amount, guarantee amount at the close of fiscal year, status of the guaranteed loans, and the total outstanding FHFC Affordable Housing Guarantee Revenue Bonds at the close of the most recent fiscal year.
- Any other information the FHFC deems appropriate.

The bill removes a requirement that the annual report include information relating to the success of the Community Workforce Housing Innovation Pilot (CWHIP) Program in meeting the housing needs of eligible areas. This pilot program is no longer funded.

Audited Financial Statements

The bill modifies provisions related to the FHFC's audited financial statements to require the FHFC to submit, within six months after the end of its fiscal year, audited financial statements prepared in accordance with generally accepted accounting principles, which include all assets, liabilities, revenues, and expenses of the FHFC, and a list of all bonds outstanding at the end of its fiscal year.

As required in current law, the audit must be conducted by an independent certified public accountant and performed in accordance with generally accepted auditing standards and government auditing standards. However, the bill requires the audit to incorporate all reports, including compliance reports, as required by such auditing standards.

The Auditor General is directed to conduct an operational audit of the FHFC's accounts and records and provide a written report on the audit to the President of the Senate and the Speaker of the House of Representatives by December 1, 2016.

FHFC Travel Policy

The bill requires FHFC's executive director and other employees to comply with state *per diem* and travel expense limits.

Repeal of the Homeownership and Opportunity for People Everywhere (HOPE) Program

The bill repeals s. 420.5091, F.S., relating to the HOPE Program, a federal program declared inactive by HUD and which has never been funded.

Additional provisions are revised throughout the bill to conform cross-references.

Housing Finance Authorities and Federal Low-Income Tax Credit

The bill amends s. 159.608, F.S., to remove an income limit currently used to qualify persons for HFA loans. This section also replaces a statutory purchase price limitation for HFA home loans with purchase price limits mandated by federal law. It also amends s. 159.603, F.S., to expand the meaning of "qualifying housing development" to include a development that meets a definition under federal laws, regardless of whether the development meets the current 60 percent eligible persons requirement for HFAs. This exception to the 60 percent requirement applies to previous HFA developments as well.

Affordable Housing Property Exemption

The bill removes the provision authorizing the affordable housing property exemption to apply to affordable housing owned by a Florida-based limited partnership whose sole general partner is a not for profit corporation qualified as charitable under the Internal Revenue Code. The bill also makes technical corrections to the amended provision. The removal of such authority is effective upon becoming a law and applies to the 2013 ad valorem tax rolls.

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:

   The Revenue Estimating Conference estimated the provisions of section 3 of the bill relating to the affordable housing property exemption will have a positive impact on local government revenue in FY 2013-2014 of $23.4 million ($117.2 million recurring).

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that the Florida Housing Finance Corporation modifies it process for issuing requests for proposals or competitive solicitation in order to allocate funds and low-income housing tax credits, the private sector and the public may benefit.

D. FISCAL COMMENTS:

None.