

STORAGE NAME: h1803.ca

DATE: April 2, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: PCS/HB 1803

RELATING TO: Affordable Housing

SPONSOR(S): Committee on Community Affairs and Representative Gay

STATUTE(S) AFFECTED: Sections 239.505, 381.0081, and Chapter 420, Florida Statutes

COMPANION BILL(S): SB 2436 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) COMMUNITY AFFAIRS

(2)

(3)

(4)

(5)

I. SUMMARY:

The intent of this bill is to streamline implementation of affordable housing programs in Florida. The bill reconstitutes the Florida Housing Finance Agency (Agency) as the Florida Housing Finance Corporation (Corporation), and transfers all Agency assets and liabilities to the Corporation on January 1, 1988. The bill requires the Corporation to develop a business plan, which must include performance measures. The Department of Community Affairs (Department) will contract with the Corporation on a multi-year basis to administer state housing programs. The contract must incorporate the performance measures included in the Corporation's business plan.

The Corporation's budget is to contain a request for operational expenditures and separate requests for other authorized programs. The budget request is not required to include information on the number of employees, salaries, salary rate, or any classification of employees. The bill provides for several trust funds to be replaced by funds established by the Corporation. All funds in the trust funds are to be transferred to the Corporation on January 1, 1998. Expenditures from the funds created by the Corporation are not required to be included in the Corporation's budget request, nor are they subject to appropriation by the Legislature or the budget amendment process.

The bill also addresses provisions governing Corporation employees and oversight of the Corporation. The bill prohibits fund raising activities by members, officers, and covered employees from service providers, and prohibits members, officers, and covered employees from competing in corporate programs. The bill also restricts service provider fund raising activities and campaign contributions for specified offices.

The bill addresses ad valorem appraisals of Low-Income Housing Tax Credit (LIHTC) projects and makes substantive changes to statutory provisions governing the HOME Program, the Catalyst Program, and the State Housing Initiatives Partnership Program.

The fiscal impact of the bill is indeterminate. The Agency indicates operational costs will decrease. Provisions affecting LIHTC properties will reduce county and municipal revenue

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raising authority by an indeterminate amount. The Constitutional mandates provisions apply, and the bill must be enacted by two-thirds vote of both houses of the Legislature.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Florida Housing Finance Agency

Organization

Section 420.504, F.S., creates the Florida Housing Finance Agency (Agency) within the Department of Community Affairs (Department). The Agency, which is a semi-independent state agency administratively attached to the Department, administers a variety state and federal housing programs. The Agency is governed by a nine-member board of directors appointed by the Governor and confirmed by the Florida Senate. In addition to the Secretary of the Department, who serves as an ex officio, voting member, section 420.504, F.S., provides for the Governor to appoint eight members from the following:

- (a) One citizen actively engaged in the residential building industry.
- (c) One citizen actively engaged in the banking or mortgage banking industry.
- (d) One citizen who is a representative of those areas of labor engaged in home building.
- (e) One citizen with experience in housing development who is an advocate for low-income persons.
- (f) Four citizens of the state who are not principally employed as members or representatives of any of the groups specified in paragraphs (a) through (e).

Chapter 96-332, Laws of Florida, revised the membership of the Agency by deleting the requirement that one member be a citizen actively engaged in the savings and loan industry, and increasing from three to four the number of members who must be citizens not principally employed as members or representatives of any of the groups represented on the Agency Board.

Programs and Operations

The Agency administers several affordable housing programs using federal and state funding, as well as funds generated through the issuance of revenue bonds. These program include:

- * State Apartment Incentive Loan Program (SAIL). Estimated funding for the SAIL program in fiscal 1996-97 is \$26 million in Documentary Stamp funds and \$5 million from the SAIL Trust Fund;
- * Low-Income Rental Housing Tax Credit (LIHTC) Program. The state tax credit allocation for 1997 is estimated as \$18 million.

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- * Florida Affordable Housing Guarantee Program. Estimated funding for fiscal year 1996-97 is \$2 million in Documentary Stamp funds and \$200 million in bonding authority.
- * HOME Investment Partnerships Program (HOME). Estimated funding for fiscal year 1996-97 is \$18,898,000 in federal funds and \$2 million in matching funds from Documentary Stamp funds.
- * Single-Family Mortgage Revenue Bond (MRB) Program. Bond closings for calendar year 1996 as of September 30, 1996, totaled \$101,575,000, involving 1,800 units.
- * Florida Homeownership Assistance Program (HAP). Estimated funding for fiscal year 1996-97 is \$4 million in Documentary Stamp funds and \$550,000 from the HAP Trust Fund.
- * Multifamily Bond Program. Bond closings for calendar year 1996 as of September 30, 1996, totaled \$172,485,000, involving 4,137 units.
- * Predevelopment Loan Program (PLP). Estimated funding in fiscal year 1996-97 is \$2 million in Documentary Stamp funds.

The Agency administers the following trust funds:

- * State Housing Trust Fund;
- * Florida Housing Finance Agency Trust Fund;
- * State Apartment Incentive Loan Trust Fund;
- * Florida Homeownership Assistance Trust Fund;
- * HOME Partnership Trust Fund;
- * Housing Predevelopment Trust Fund;
- * Local Government Housing Trust Fund.

The Agency is staffed by 65 Full Time Equivalent (FTEs) and uses 2.58 percent of total funds administered on salaries and operating costs. The Agency uses no General Revenue funds for its operational expenses; transaction fees are sufficient to cover all such costs. The Agency utilizes consultants for the specialized nature of bond finance, marketing, and sales. The Agency is assessed an administration fee for use of the Department's finance and accounting staff, purchasing staff, personnel staff, computer staff, legal staff, and other support staff in the Office of the Secretary.

Oversight

As a state agency, the Agency is governed by statutory requirements covering administrative procedures (chapter 120, F.S.), public records (chapter 119, F.S.), public meetings (chapter 286, F.S.), procurement of personal property and services (chapter

287, F.S.), state employment (chapter 110, F.S.), the state appropriation process (chapter 216, F.S.), financial matters in general (chapter 215, F.S.), and bond issuance (sections 215.57-215.83, F.S., the State Bond Act).

In addition to the oversight provided by the above statutory provisions, the Agency is subject to numerous federal oversight requirements governing the federal programs it administers. These include the Federal Single Audit Act, audits and program rules and regulations of the U.S. Department of Housing and Urban Development, and audits and program rules and regulations of the U.S. Internal Revenue Service.

As noted above, the Agency funds many of its programs through revenue bonds. Under the provisions of the State Bond Act, the Governor and the Cabinet approve the Agency's state bond allocation and the issuance and sale of Agency bonds. All Agency bonds are issued by the Division of Bond Finance. The State Board of Administration (composed of the Governor, Comptroller, and Treasurer), make the fiscal sufficiency determination of Agency Bonds required by section 16, Article VII, of the State Constitution. In addition, Agency is subject to disclosure requirements on its bond issues by the Securities and Exchange Commission. The Agency's financial strength and management also are subject review by bond rating agencies.

Standards of Conduct

Section 420.512, F.S., prescribes standards of conduct for members, officers, and employees of the FHFA. It requires the written disclosure of any direct or indirect conflict of interest and prohibits the participation by the member, officer, or employee having such interest in any agency action with respect to the contract, sponsor, or lending institution. It clarifies the right of any member, officer, or employee to acquire an interest in bonds of the agency or have an interest in any banking institution in which the bonds of the agency are deposited or which is trustee or paying agency under any bond resolution, indenture or similar instrument to which the agency is a party. It prohibits a financial advisor to the Agency from serving as an underwriter for the Agency's bonds within 2 years of having been its financial adviser. The Code of Ethics, Chapter 112, Florida Statutes, provides stricter standards and prohibitions regarding conflict of interests. However, the Commission on Ethics has determined that where there are two statutes providing standards of conduct, rules of statutory construction dictate that the later expression of the legislature controls. In this instance, s. 420.512, F.S., was enacted subsequent to the applicable sections of Chapter 112 and is, therefore, controlling.

Florida Affordable Housing Catalyst Program

The Catalyst Program was created by the Sadowski Act, which established the program within the Department expressly for the purpose of providing technical assistance to the HOME investment Partnership, HOPE, and State Housing Initiatives Partnership Programs. While some Florida communities have ongoing HOPE programs, Congress has not appropriated funds to the program since 1994 and local governments receive technical assistance for the program through the U.S. Department of Housing and Urban Development. The state HOPE program, authorized in the Florida Housing Finance Agency Act, has never been funded. In 1995, the Affordable Housing Study Commission recommended that the HOPE program be eliminated from the scope of technical assistance provided through the Catalyst Program.

State Housing Initiatives Partnership Act

The State Housing Initiatives Partnership program channels a portion of documentary stamp tax revenues created by the Sadowski Act to counties and entitlement cities in Florida. Estimated funding in fiscal year 1996-97 is \$88,331,488. The program is intended to allow local governments to use SHIP funds to develop housing program designed specifically for their communities. Counties and Cities may use SHIP funds for emergency repairs, new construction, rehabilitation, down payment/closing costs, new construction impact fees, construction and gap financing, mortgage buy-downs, special needs housing, home ownership counseling, and property acquisition for housing to be produced within 12 months. SHIP funds may also be used to provide the required match for federal HOME Investment Partnership Program funds and other state and federal funds. The (Agency) uses independent contractors to provide technical assistance for counties and cities participating in SHIP.

The Agency indicates that experience in implementing the SHIP program at the state and local levels has revealed glitches in the original act related to the implementation of affordable housing incentives, or regulatory reforms. The Agency also sees the need to make technical or clarifying changes to facilitate streamlines program implementation at both the state and local levels. In its 1995 report, the Affordable Housing Study Commission recommended program refinements for the development and implementation of local housing assistance plans, and the implementation of housing incentives.

Low Income Housing Tax Credit Program/Ad Valorem Taxation

In 1986, The United States Congress created the Low-Income Rental Housing Tax Credit (LIHTC) Program (Section 42 of the Internal Revenue Code of 1986, as amended). The program gives developers credit towards federal tax liability in exchange for acquiring, substantially rehabilitating, or constructing rental housing projects that set aside 20 percent or more units for individuals or families with very low incomes. The amount of credit that is allocated is directly based on the number of qualified low-income units that meet federal rent and income targeting requirement.

Section 420.5099, F.S., governs Florida's participation in the LIHTC program and designates the Florida Housing Finance Agency (FHFA) as the sole issuer of tax credits in Florida. To date, the state LIHTC program has produced over 40,000 units valued at over \$1.9 billion. Approximately 4,000 new units are added each year. The state's tax credit allocation authority was \$31.6 million in 1994, \$20.7 million in 1995, and \$18.2 million in 1996. All 1994, 1995, and 1996 tax credits were allocated. The FHFA estimates the state's allocation authority for 1997 will be \$18 million.

According to the Florida Housing Finance Agency, a typical "tax credit" development has approximately 150 units, is newly constructed, and sets aside 95 percent of its units for people with incomes at or less than 60 percent of the area median income. The typical development has a total cost of approximately \$6.5 million and will generate \$483,075 in tax credits annually for 10 years. Developments must remain affordable for 15 years to take advantage of the tax credits.

Ad Valorem Taxation

Article VII, section 4 of the Florida Constitution, requires "a just valuation of all property for ad valorem taxation . . ." However, the Florida Constitution does allow agricultural, high water recharge, and noncommercial recreational property to be classified by the Legislature and assessed solely on the basis of character or use. Additionally, tangible personal property and livestock that is held as inventory may be assessed at a specified percentage of its value or totally exempted from taxation.

The Florida Supreme Court has interpreted "just valuation" to mean fair market value. Walter v. Schuler, 176 So. 2d 81 (Fla. 1965). Such an assessment may be exclusive of reasonable fees and costs of sale. Oyster Pointe Resort Condo. v. Nolte, 524 So. 2d 415 (Fla. 1988).

Section 193.011, F.S., directs property appraisers to take into consideration eight factors when deriving a just valuation of property. Briefly, these factors include:

1. The present cash value of the property, exclusive of reasonable fees and costs of purchase;
2. The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking all legal limitations imposed on the property into consideration;
3. The location of the property;
4. The quantity or size of the property;
5. The cost of the property and the present replacement value of improvements;
6. The condition of the property;
7. The income from the property;
8. The net proceeds from the sale of the property, exclusive of reasonable fees and costs of the sale.

Assessment of LIHTC Properties

During the 1995 Legislative Session, the Legislature considered several initiatives relating to ad valorem taxes imposed on LIHTC properties. These initiatives were intended to address a perceived problem in the way LIHTC properties were assessed and to provide property tax relief to the owners of LIHTC properties. Because of the constitutional requirement to appraise property at full market value, and the case law discussed above, property appraisers appraised LIHTC properties without considering the rent restrictions, or by including the value of the tax credits as income to the property. Several owners of LIHTC properties and their representatives argued and continue to argue that this approach is unfair and has resulted in severe cash flow problems for these low-income housing developments. In brief, they argue that tax credits are not income to the property, and the income from rent restricted units should be considered the actual rent charged.

House Bill 2039, which became chapter 95-383, Laws of Florida, amended section 420.5099, F.S., relating to allocation of the low-income housing tax credit, to provides that for purposes of implementing the Low-Income Tax Credit Program, neither tax credits, nor the value of the equity generated by tax credits allocated to or invested in low-income housing tax credit developments, shall be considered as income to the property and the rental income from rent restricted units in a low-income tax credit development shall be the actual rents charged.

Based on interviews with several property appraisers, the Impact Conference estimated that two-third of the LIHTC units would be assessed based on income to the property as defined by the amendments to section 420.5099, F.S. However, subsequent to passage of HB 2039, the Department of Revenue received inquiries from property appraisers requesting guidance on the interpretation of this legislation and its effect on the appraisal and assessment of LIHTC properties. The department issued a property tax information bulletin on August 13, 1996, stating that "no authority exists which makes this legislation applicable to appraisals of low-income tax credit developments for purposes of property taxation.

B. EFFECT OF PROPOSED CHANGES:

The intent of this bill is to streamline the implementation of affordable housing programs. The bill also makes numerous technical and clarifying changes to statutes governing affordable housing programs. Major changes to the statutes are summarized below. Detailed descriptions of specific statutory changes are presented in section II.D, section-by-section research.

Florida Housing Finance Agency

Organization

The bill reconstitutes the Florida Housing Finance Agency (Agency) as the Florida Housing Finance Corporation, and transfers all Agency assets and liabilities to the Corporation on January 1, 1988. The Corporation is created within the Department of Community Affairs as a public corporation and a public body corporate and politic. The Corporation is to be an entrepreneurial public corporation organized to provide and promote the public welfare by administering the governmental function of financing and refinancing housing and related facilities in Florida. The Corporation is not a department of the executive branch of state government within the scope and meaning of section 6, Article IV of the State Constitution, but is functionally related to the Department. The Corporation is a separate budget entity and is not subject to control, supervision, or direction by the Department in any manner, including but not limited to personnel, purchasing, transactions involving real or personal property, and budgetary matters.

The Corporation will consist of a board of directors composed of the Department Secretary as an ex officio and voting member and eight members appointed by the Governor, subject to confirmation by the Senate. Current members of the Agency Board are to serve as members of the Corporation Board. However, the bill changes the composition of the Corporation board to add a seat to be filled by a citizen actively engaged in the commercial building industry and to add a seat to be filled by a citizen who is a representative of local government. The bill reduces from four to two the

number of at-large-seats. The bill provides for this change in membership to be effective when the term of one citizen member expires in 1988.

The bill provides that a member of the Corporation board of directors is not personally liable for monetary damages to any person for any statement, vote, decision, or failure to take an action regarding organizational management or policy by that member, unless the member breached or failed to perform his duties as a member, and the member's breach of, or failure to perform, his or her duties meets specified conditions.

Programs and Operations

The bill makes numerous technical, clarifying, and conforming changes to statutes governing programs administered by the Agency.

Several substantive changes are made to the HOME Program. The bill authorizes the Corporation to make loan on a first-come, first-served basis in connection with its single family bond program. The bill also authorizes projects based on different selection criteria if located in a disaster area or deemed a demonstration project. The bill also revises the approval criteria for funding projects.

The bill requires the Corporation to develop a business plan, which must include the following performance measures:

- (a) the ability of low and moderate income Floridians to access housing that is decent and affordable;
- (b) the continued availability and affordability of housing financed by the corporation to target populations;
- (c) the availability of affordable financing programs to increase individual access to housing and stimulate private production of affordable housing;
- (d) the stimulus of economic activity created by the affordable housing finance programs administered by the Corporation;
- (e) the establishment and maintenance of efficiencies in the delivery of affordable housing;
- (f) such other measures as directed by the Corporations' board of directors.

In equal participation with the Department, the Corporations also is to develop annually a strategic plan for the provision of affordable housing. The strategic plan is to be a part of the Department's strategic plan.

The bill requires the Department to contract with the Corporation on a multi-year basis to stimulate, provide, and foster affordable housing in the state. The contract must incorporate the performance measures required to be included in the Corporation's business plan. The contract between the Department and the Corporation must provide that in the event the corporation fails to comply with any of the performance measures, the Department Secretary will notify the Governor and refer the nonperformance to the Department's inspector general for review and determination as to whether the failure is

due to forces beyond the Corporation's control or whether it is due to inadequate management of the Corporation's resources. If a failure is determined to be due to inadequate management, the Department's inspector general must make recommendations for solutions.

The bill provides for the State Housing Trust Fund to be administered by the Corporation rather than the Department and the Agency. The bill requires money deposited to the Fund to be transferred quarterly in advance or as soon as received, into the Fund. Subject to conditions, the Comptroller is to transfer such funds to the Corporation upon certification by the Department Secretary that the Corporation is in compliance with the contract requirements. The certification must include the split of funds among programs administered by the corporation and the Department. The Corporation is required to deposit moneys advanced by the Comptroller into a separate fund established with a qualified public depository meeting the requirements of chapter 280, F.S., which fund is to be named the "State Housing Fund" and used for the purposes of chapter 420, F.S.

Current language allowing administrative and personnel costs incurred in implementing chapter 420, F.S., to be paid from the Fund so long as such costs do not exceed 5 percent is amended to increase the maximum to 10 percent. The current requirement that moneys in the trust fund not currently needed for the purposes of this chapter be deposited with the Treasurer to the credit of the trust fund is repealed. Rather, the bill provides for moneys in the fund not currently needed for the purposes of this chapter to be invested as provided by statute.

The bill provides for several trust funds to be replaced by funds established by the Corporation with a qualified public depository meeting statutory requirements. All funds in the trust funds are to be transferred to the Corporation on January 1, 1998, at which time the trust funds are to be closed. Expenditures from the funds created by the Corporation are not required to be included in the Corporation's budget request, nor are they subject to appropriation by the Legislature or the budget amendment process. The affected funds are:

- * Florida Housing Finance Agency Trust Fund;
- * State Apartment Incentive Loan Trust Fund;
- * Florida Homeownership Assistance Trust Fund;
- * HOME Partnership Trust Fund;
- * Housing Predevelopment Trust Fund;

The bill authorizes the Corporation to prepare and submit to the Department Secretary a budget request for purposes of the Corporation. The Corporation's budget request will contain a request for operational expenditures and separate requests for other authorized programs, each of which shall be classified as a special category appropriation. The Corporation's budget request is not required to include information on the number of employees, salaries, or any classification of such, and the approved operating budget is not required to comply with section 216.181(7)-(9), F.S., relating to salary rates.

The Corporation is authorized to own real and personal property for the purposes of part V of chapter 420, F.S., and to sell the property without regard to the provisions of chapter 253, F.S., relating to state lands, and chapter 270, F.S., relating to public lands.

Statutory provisions governing the Agency's bonds are substantially amended. In brief, the Agency is authorized to issue bonds on its own instead of the Division of Bond Finance issuing the bonds on behalf of the Agency. Current law providing for the Governor and the Cabinet to approve the issuance and sale of Agency bonds is deleted. The Governor and the Cabinet will continue to approve the Agency's state bond allocation. The State Board of Administration (composed of the Governor, Comptroller, and Treasurer), will make the fiscal sufficiency determination of Agency Bonds required by section 16, Article VII, of the State Constitution. Current language requiring that in the event of a failure to comply with statutory provisions relating to negotiated sales of bonds, all future bonds must be sold at public sale, is repealed. The bill also repeals the requirement for a bond rating on Corporation bonds

The bill provides for the appointment and removal of the Corporation executive director by the Department Secretary, with the advice and consent of the Corporation's board of directors. The executive director is required to communicate with and provide information to the Legislature regarding the Corporation's activities.

Notwithstanding general law provisions relating to legislatively authorized positions, the Corporation board is authorized to develop and implement rules regarding employment of employees and service providers. The Corporation is authorized to hire any individual who is employed by the agency. Employees, at their option, may retain their status as a participant in the Florida Retirement System, but are not otherwise deemed state employees.

Alternatively, the Corporation may lease employees from the Department of Community Affairs or the Department of Management Services. In such cases, employees will retain their status as a state employees, including their right to participate in the Florida Retirement System, but will work under the direct supervision of the Corporation. The Corporation is authorized to pay pensions and establish pension plans, pension trusts, and benefit and incentive plans for any and all of its current or former employees or agents.

The section requires the executive director's office and the Corporation's files and records to be located in Leon County.

Oversight

The Corporation is subject to chapter 119, F.S., relating to public records, subject to exceptions applicable to the corporation, chapter 286, F.S., relating to public business, and chapter 120, F.S., relating to administrative procedures. The Corporation is not governed by chapter 607, F.S., relating to corporations. Nor is the Corporation governed by chapter 287, F.S., relating to the procurement of personal property and services.

As noted above, the Corporation will operate under a contract with the Department, and the contract will include performance measures. The Corporation is required to submit an annual report to the Governor, the President of the Senate, and the Speaker of the House. The Corporation also must submit a copy of an annual financial audit of its

accounts and records conducted by an independent certified public accountant performed in accordance with generally accepted auditing standards and government auditing standards.

The Corporation will continue to be subject to numerous federal oversight requirements governing the federal programs it administers. These include the Federal Single Audit Act, audits and program rules and regulations of the U.S. Department of Housing and Urban Development, and audits and program rules and regulations of the U.S. Internal Revenue Service. In addition, the Corporation will be subject to disclosure requirements on its bond issues by the Securities and Exchange Commission. The Corporation's financial strength and management also will be subject review by bond rating agencies.

Standards of Conduct

The bill prohibits fund raising activities by members, officers, and covered employees from service providers, and prohibits members, officers, and covered employees from competing in corporate programs.

Employees of the Agency and agency board members covered by section 112.313(9)(a)6. shall continue to be entitled to the exemption in that paragraph, notwithstanding being hired by the corporation or appointed as board members of the Corporation. The referenced section provides exemptions from post-employment restrictions under specified conditions.

The bill repeals the current prohibition against a financial advisor to the Agency serving as an underwriter for the Agency's bonds within 2 years of having been its financial advisor.

The bill prohibits service providers engaging in prohibited business solicitation communications with officers, members, or covered employees of the Corporation. The bill also provides that service providers may not make contributions in any amounts for or on behalf of candidates for Governor, nor make a contribution in excess of \$100 to any candidate for a member of the State Board of Administration other than the Governor while the service provider is included in an applicant pool, while the service provider provides services to the Corporation, and for the longer of a period of 2 years thereafter or for a period through the next general election for Governor. The section also prohibits service providers from participating in fundraising activities for or on behalf of candidates for Governor in Florida while the service provider is included in an applicant pool, while the service provider provides services to the Corporation, and for the longer of a period of 2 years thereafter or for a period through the next general election for Governor.

The section also requires service providers to provide the Corporation a statement that they have not contributed to candidates for Governor or contributed in excess of the amounts allowed by the section for a Cabinet position or engaged in prohibited fundraising activities since the effective date of this section or during the 24 months preceding the service providers' application to provide services to the corporation, whichever period is shorter.

Florida Affordable Housing Catalyst Program

The bill makes several changes to statutory provisions governing the Catalyst program. It requires, to the maximum extent feasible, the entity providing the necessary expertise be recognized by the Internal Revenue Service as a nonprofit tax-exempt organization. Its primary mission must be the provision of affordable housing training and technical assistance. It must have an ability to provide training and technical assistance statewide, and a proven track record of successfully providing training and technical assistance under the Affordable Housing Catalyst Program.

The bill deletes a specific requirement to provide technical assistance for the federal HOPE program. The bill expands the scope of the technical assistance provided beyond the State Housing Initiative Partnership and HOME Investment Partnership programs to encompass other state affordable housing programs.

State Housing Initiatives Partnership (SHIP) Act

The bill makes numerous changes to the SHIP program which are discussed in detail in section II.D, section-by-section research (sections 33 - 39). Current provisions providing for local housing partnerships are amended to encourage additional participants. Provisions governing the membership of local government affordable housing advisory committees are amended to increase participation by individuals involved with affordable housing.

The bill deletes the requirement to adopt a separate local housing incentive plan, and requires local governments to adopt local housing incentive strategies as part of their local housing assistance plans. The bill requires that local housing incentives adopted as part of the local housing assistance plan be implemented by amendment of local land development regulations or other appropriate local process within 24 months of adoption. The bill does not require submission of a new local housing assistance plan to implement amendments in the act until the currently effective plan expires. The bill also requires counties and cities with existing housing incentive plans to complete a self-check on the status of implementation and to report their findings in the required annual report to the Corporation.

The bill authorizes the Corporation to terminate SHIP funds to local governments for failure to implement housing incentives. The bill permits local governments 30 days to respond to a Corporation notice of termination of funds, and provides for the Corporation to consider extenuating circumstances. The Corporation is authorized to enter into local extension agreements. Provision is made for termination of funds in the event extension time frames are not met.

The bill increases the minimum program allocation from \$250,000 to \$350,000. The bill also allows small counties, as defined in section 120.52(17), F.S., and municipalities receiving a local housing distribution of up to \$350,000, to use up to 10 percent of program income for administrative purposes. The bill allows other local governments to use 5 percent of program income for administrative costs.

The bill provides that when appropriated funds remain in the Local Government Housing Trust Fund, the Corporation will distribute the funds to counties or eligible municipalities impacted by a disaster, upon formal declaration by the Governor. If this condition does not exist, the Corporation is to distribute any remaining funds proportionately among local governments that have fully spent their distributions on eligible activities and have

currently approved local housing assistance plans. Existing provisions requiring a competitive funding cycle with remaining funds are deleted. Finally, the bill allows an annual appropriation of up to \$200,000 to the Corporation from the trust fund exclusively for the purpose of overseeing local compliance with program requirements.

Low Income Housing Tax Credit Program/Ad Valorem Taxation

The bill requires that, in considering ad valorem assessment of affordable housing programs, neither the tax credits nor the value of the equity generated by tax credits allocated to or invested in low-income housing tax credit developments be considered as income to the property. The bill also requires the rental income from rent-restricted units in low-income tax credit developments be valued giving due consideration to all limitations imposed by federal, state, and local law or any other limitation running with the land.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The existing rule making authority of the Florida Housing Finance Agency is transferred to the Florida Housing Finance Corporation.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

The Florida Housing Finance Corporation assumes all responsibilities, obligations, and powers of the Florida Housing Finance Agency.

(2) what is the cost of such responsibility at the new level/agency?

The Florida Housing Finance Agency indicates a cost saving of \$869,344 annually.

- (3) how is the new agency accountable to the people governed?

The Corporation is subject to chapter 119, F.S., relating to public records, subject to exceptions applicable to the corporation, chapter 286, F.S., relating to public business, and chapter 120, F.S., relating to administrative procedures. The Corporation is not governed by chapter 607, F.S., relating to corporations. Nor is the Corporation governed by chapter 287, F.S., relating to the procurement of personal property and services.

The Corporation will operate under a contract with the Department, and the contract will include performance measures. The Corporation is required to submit an annual report to the Governor, the President of the Senate, and the Speaker of the House. The Corporation also must submit a copy of an annual financial audit of its accounts and records conducted by an independent certified public accountant performed in accordance with generally accepted auditing standards and government auditing standards.

The Corporation will continue to be subject to numerous federal oversight requirements governing the federal programs it administers. These include the Federal Single Audit Act, audits and program rules and regulations of the U.S. Department of Housing and Urban Development, and audits and program rules and regulations of the U.S. Internal Revenue Service. In addition, the Corporation will be subject to disclosure requirements on its bond issues by the Securities and Exchange Commission. The Corporation's financial strength and management also will be subject review by bond rating agencies.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

Section 19 of this bill would result in lower appraisals for LIHTC properties, and thus lower ad valorem tax payments.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes, see section 22 of the Section-by-Section Research, relating to political fund raising and contributions.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

Not applicable.

- (2) Who makes the decisions?

Not applicable.

- (3) Are private alternatives permitted?

Not applicable.

(4) Are families required to participate in a program?

Not applicable.

(5) Are families penalized for not participating in a program?

Not applicable.

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

D. SECTION-BY-SECTION RESEARCH:

Section 1. Subsection (4) of section 420.0003, F.S., is amended to apply existing and amended duties of the Department of Community Affairs (Department) in carrying out the state housing strategy, to the Florida Housing Finance Corporation (Corporation). The subsection is amended to correct references to the Department's strategic plan and to require the plan to include the strategic plan for housing production prepared pursuant to section 420.511, F.S., as amended by this bill.

Section 2. Section 420.0005, F.S., relating to the State Housing Trust Fund (Fund), is amended to provide for the Fund to be administered by the Corporation rather than the Department and the Florida Housing Finance Agency (Agency). Notwithstanding the provisions of chapter 216, F.S., relating to planning and budgeting, the section requires money deposited to the Fund to be transferred quarterly in advance or as soon as received, into the Fund. Subject to the provisions of sections 420.5092(6)(a) and (b), F.S., the Comptroller is to transfer such funds to the Corporation upon certification by the Department Secretary that the Corporation is in compliance with the requirements of section 420.0006, F.S. The certification must include the split of funds among programs administered by the corporation and the Department as specified in chapter 92-317, Laws of Florida, as amended. The Corporation is required to deposit moneys advanced

by the Comptroller into a separate fund established with a qualified public depository meeting the requirements of chapter 280, F.S., which fund is to be named the "State Housing Fund" and used for the purposes of chapter 420, F.S.

Current language allowing administrative and personnel costs incurred in implementing chapter 420, F.S., to be paid from the Fund so long as such costs do not exceed 5 percent, is amended to increase the maximum to 10 percent. The current requirement moneys in the trust fund not currently needed for the purposes of this chapter be deposited with the Treasurer to the credit of the trust fund is repealed. Rather, the section provides for moneys in the fund not currently needed for the purposes of this chapter to be invested as provided by statute.

Section 3. Section 420.0006, F.S., is created to require the Department to contract, notwithstanding part 1 of chapter 287, F.S., relating to procurement of personal property and services, with the Corporation on a multi-year basis to stimulate, provide, and foster affordable housing in the state. The contract must incorporate the performance measures required by section 420.511, F.S.

The contract between the Department and the Corporation must provide that in the event the corporation fails to comply with any of the performance measures, the Department Secretary will notify the Governor and refer the nonperformance to the Department's inspector general for review and determination as to whether the failure is due to forces beyond the Corporation's control or whether it is due to inadequate management of the Corporation's resources. Failures determined to be due to outside forces are not to be considered violations of the contract.

If a failure is determined to be due to inadequate management, the Department's inspector general must make recommendations for solutions. Advances are to continue to be made pursuant to section 420.0005, F.S., during the pendency of the review by the Department's inspector general. The Governor is authorized to resolve differences of opinion with respect to contract performance and to direct that advances continue when a failure results from inadequate management.

Section 4. Section 420.501, F.S., is amended to rename the act as the "Florida Housing Finance Corporation Act."

Section 5. Subsections (2) and (7) of section 420.502, F.S., are amended to revise legislative findings.

Subsection (2) is amended to declare the need to assist and implement welfare-to-work transitioning initiatives to coordinate with state and federal policies.

Subsection (7) is amended to replace the word "agency" with "corporation," and to amend findings regarding the Corporation to provide for specified functions to be on a quantifiable, measurable basis providing sufficient, clear evidence of the Corporation's goals and its success in achieving the goals.

Section 6. Section 420.503, F.S., is amended to revise existing definitions and to create new definitions.

Several definitions are revised to replace references to “agency” with “corporation.” The definition of “agency” is revised to mean the Florida Housing Finance Agency as it exists before January 1, 1998, and thereafter as previously existing under state law.

The definition of “affordable housing debt” is revised to replace the term “for-profit corporations with “for-profit entities.”

The definition of “authorized investments” is substantially revised to mean investments permitted under section 215.47, F.S., and investment agreements the issuer of which is rated or the guarantor of which is rated in one of the three highest rating categories by a nationally recognized rating service.

The definition of “bond” is amended to conform the definition to changes made to section 420.509, F.S., regarding the issuance of bonds by the Corporation.

The definition of “housing for the elderly” is revised to replace an obsolete reference to the “Farmers Home Administration” with the “Rural Development Agency of the United States Department of Agriculture.”

The definition of “mortgage” is revised to delete language requiring bonds issued to fund instruments to meet specified conditions.

The definition of “pledged revenues” is amended to include any funds or accounts designated by the Corporation.

The definition of “project” is revised to replace the purpose of providing “housing for families” with providing “housing for eligible persons or families.”

The section deletes definitions for “energy audit,” “energy conservation loan,” and “State Bond Act.”

The sections adds definitions for the terms “contract,” “contribution,” “corporation,” “covered employee,” “members,” “officers,” “prohibited business solicitation communication,” “service provider,” and “services.”

Section 7. Section 420.504, F.S., is amended to revise provisions creating the Agency. Existing subsection (1) is divided into subsection (1) and a new subsection (3) and amended to create the Corporation within the Department as a public corporation and a public body corporate and politic. The subsection declares it to be the intent of and constitutional construction by the Legislature that the Corporation constitutes an entrepreneurial public corporation organized to provide and promote the public welfare by administering the governmental function of financing and refinancing housing and related facilities in Florida. It is further declared to be the intent of and constitutional construction by the Legislature that the Corporation is not a department of the executive branch of state government within the scope and meaning of section 6, Article IV of the State Constitution, but is functionally related to the Department.

Subsection (1) is further amended to require that the executive function of state government to be performed by the Department Secretary in the conduct of the business of the Corporation be performed pursuant to an annual contract to monitor and set performance standards for implementation of the strategic plan for the provision of

housing approved for the Corporation in section 402.0006, F.S. The contract must include performance standards established in the business plan described in section 420.511, F.S.

New subsection (2) declares the Corporation is constituted as a public instrumentality, and the exercise by the Corporation of powers conferred by this act is considered to be the performance of an essential public function. The Corporation is subject to chapter 119, F.S., relating to public records, subject to exceptions applicable to the corporation, and subject to chapter 286, F.S., relating to public business. The Corporation is not governed by chapter 607, F.S., relating to corporations. The subsection also provides a severability clause.

New subsection (3) declares the Corporation is a separate budget entity and is not subject to control, supervision, or direction by the Department in any manner, including but not limited to personnel, purchasing, transactions involving real or personal property, and budgetary matters.

Language from existing subsection (1) providing for the composition of the Agency is incorporated into new subsection (3) and amended to provide for the Corporation to consist of a board of directors composed of the Department Secretary as an ex officio and voting member and eight members appointed by the Governor, subject to confirmation by the Senate.

New paragraphs (e) and (f) are added to subsection (3) to add a seat to be filled by a citizen actively engaged in the commercial building industry and to add a seat to be filled by a citizen who is a representative of local government. Current paragraph (e) is changed to paragraph (g) and amended to reduce from four to two the number of at-large-seats. The section provides for this change in membership to be effective when the term of one citizen member expires in 1988.

Existing subsections (2), (3), (4), and (5) are renumbered as subsections (4), (5), (6), and (7) and amended to replace "agency" with "corporation" and to reference the board of directors of the corporation.

New subsection (8) is created to limit the liability of board members. The subsection provides a member of the Corporation board of directors is not personally liable for monetary damages to any person for any statement, vote, decision, or failure to take an action regarding organizational management or policy by that member, unless the member breached or failed to perform his duties as a member, and the member's breach of, or failure to perform, his or her duties constitutes:

1. A violation of criminal law, unless the member had reasonable cause to believe their conduct was lawful or had no reasonable cause to believe his or her conduct was unlawful. The subparagraph provides that a judgement or other final adjudication against a member in any criminal proceeding for violation of the criminal law estops that member from contesting the fact that their breach, or failure to perform, constitutes a violation of criminal law, but does not estop the member from establishing that their conduct was lawful or had no reasonable cause to believe that his or her conduct was unlawful.

2. A transaction from which the member derived an improper personal benefit, either directly or indirectly; or
3. Recklessness or an act **or** omission that was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

A Subsection (9) is created to define the term “recklessness” as used in this section.

Section 8. Section 420.505, Florida Statutes, relating to meetings, quorum and voting, is amended to reflect the change from “agency” to “corporation.”

Section 9. Section 420.506, F.S., relating to the Agency executive director, is amended to provide for the appointment and removal of the executive director to be by the Department Secretary, with the advice and consent of the Corporation’s board of directors. The executive director is required to communicate with and provide information to the Legislature regarding the Corporation’s activities. The executive director must establish a contact within the Corporation to work with the Department’s inspector general.

Notwithstanding the provisions of section 216.262, F.S., relating to legislatively authorized positions, the Corporation board is authorized to develop and implement rules regarding employment of employees and service providers. The Corporation is authorized to hire any individual who is employed by the agency. Employees, at their option, may retain their status as a participant in the Florida Retirement System, but are not otherwise deemed state employees.

Alternatively, the Corporation may lease employees from the Department of Community Affairs or the Department of Management Services. In such cases, employees will retain their status as a state employees, including their right to participate in the Florida Retirement System, but will work under the direct supervision of the Corporation.

The section requires the executive director’s office and the Corporation’s files and records to be located in Leon County. The Current limit on the number of policy making positions is repealed.

Section 10. Section 420.5061, F.S., is created to transfer all Agency assets and liabilities to the Corporation on January 1, 1988. In assuming all previous Agency obligations, the Corporation retains any rights and remedies previously afforded by law or contract, including the rights of the Agency under chapter 201, F.S., relating to excise tax on documents, and part VI of chapter 159, F.S., relating to bond financing. On January 1, 1998, all references in Florida law to the Agency are deemed to mean the Corporation. The section provides for the provisions of section 112.313, F.S., relating to standards of conduct for public officers and employees or agencies, to apply as if the Agency were still in place.

The section provides that any employees of the Agency and agency board members covered by section 112.313(9)(a)6. shall continue to be entitled to the exemption in that paragraph, notwithstanding being hired by the corporation or appointed as board members of the Corporation. The referenced section provides exemptions from post-employment restrictions under specified conditions.

Effective January 1, 1998, the section transfers all state property in use by the Agency to the Corporation.

Section 11. Section 420.507, F.S., relating to powers of the Agency, is amended to reflect the creation of the Corporation and to delete obsolete provisions.

Subsection (6) is amended to authorize the Corporation to borrow money from the Federal Home Loan Bank or Rural Housing Services of the United States Department of Agriculture.

A new subsection (27) provides that notwithstanding the provisions part I of chapter 287, F.S., relating to procurement of commodities, insurance, and contractual services, the Corporation may establish and implement guidelines for the purchase and procurement of materials.

A new Subsection (28) authorizes the Corporation to expend funds advanced from the State Housing Trust Fund for the purposes of part V of chapter 420, F.S.

A new subsection (29) authorizes the Corporation to own real and personal property for the purposes of part V of chapter 420, F.S., and to sell the property without regard to the provisions of chapter 253, F.S., relating to state lands, and chapter 270, F.S., relating to public lands.

A new subsection (30) authorizes the Corporation to prepare and submit to the Department Secretary a budget request for purposes of the Corporation. As allowed by section 216.351, F.S., the section provides that notwithstanding the provisions of chapter 216, F.S., relating to state planning and budgeting, the Corporation's budget request shall contain a request for operational expenditures and separate requests for other authorized programs, each of which shall be classified as a special category appropriation.

The Corporation's budget request is not required to include information on the number of employees, salaries, or any classification of such, and the approved operating budget is not required to comply with section 216.181(7)-(9), F.S., relating to salary rates.

The Department Secretary is authorized to include within the Department's budget request the Corporation's budget request in the form authorized by this section.

A new subsection (31) authorizes the Corporation, notwithstanding the provisions of 216.301, F.S., relating to undisbursed balances of appropriations, to retain any unused operational expenditure appropriation for other lawful purposes of the Corporation.

A new subsection (32) authorizes the Corporation to pay pensions and establish pension plans, pension trusts, and benefit and incentive plans for any and all of its current or former employees or agents.

A new subsection (33) authorizes the Corporation to receive federal funding in connection with the Corporation's programs directly from the Federal Government.

A news subsection (34) authorizes the Corporation to employ an internal affairs officer, who is to be directly accountable to the Corporation board. The internal auditor will be

responsible for conducting independent investigations at the direction of the board. Audits conducted by the internal auditory must meet specified standards.

Section 12. Subsection 420.508, F.S., relating to special powers of the Agency, is amended to reflect the creation of the Corporation.

Subsection (2)(b) is amended to provide for the Corporation, rather than the State Board of Administration, to make certain determinations regarding the security of loans to, or obligations purchased from, lending institutions. Obsolete provisions also are repealed.

Subsection (3)(a)4. is amended to repeal the requirement that bonds issued to fund or finance mortgage loans be rated by a nationally recognized rating service in any one of the highest three classifications. An exception to this requirement for bonds privately placed through a negotiated sale also is repealed. The prohibition of any loan or mortgage being made for a term which is longer than the term of the bond, debenture, or note, used to fund the mortgage or loan is repealed.

A new subsection (4) is created to authorize the Corporation to sell, transfer, or otherwise encumber any loan made pursuant to part V of chapter 420, F.S.

A new subsection (5) is created to authorize the Corporation to establish with a qualified depository meeting the requirements of chapter 280, F.S., relating to security for public deposits, a separate fund known as the "Florida Housing Finance Corporation Fund." The fund is to be administered by the Corporation. The following are to be deposited into the fund

- * all fees collected by the Corporation directly from the Federal Government for administration of the federal section 8 housing program;
- * all annual administrative fees collected by trustees for bond programs and remitted to the Corporation;
- * all expense fees related to costs of bond issuance collected by trustees and remitted to the Corporation;
- * all tax credit program fees.

The fund shall be utilized for the purposes of the Corporation, including payment of administrative expenses.

The subsection transfers all amounts held in the Housing Finance Agency Trust Fund to the Corporation for deposit in the Florida Housing Finance Corporation Fund on January 1, 1998, whereupon the trust fund must be closed.

The subsection provides that expenditures from the Florida Housing Finance Corporation Fund are not required to be included in the Corporation's budget request. Such funds are not subject to appropriation by the Legislature.

Section 13. Section 420.5087, F.S., relating to the State Apartment Incentive Loan Program (SAIL), is amended to reflect the creation of the Corporation. Subparagraph

14. is added to subsection (6)(c) to include as a criterion for ranking SAIL applications projects that implement or assist welfare-to-work transitioning.

Subsection (7) is amended to dissolve the State Apartment Incentive Loan Trust Fund and to authorize the Corporation to establish with a qualified public depository meeting the requirements of chapter 280, F.S., a State Apartment Incentive Loan Fund, which will be administered by the Corporation. All amounts held in the State Apartment Incentive Loan Trust Fund on January 1, 1989, must be transferred to the Corporation for deposit in the new fund and the trust fund must be closed.

Subsection (7) also provides that expenditures from the State Apartment Incentive Loan Fund are not required to be included in the Corporation's budget request or be subject to appropriation by the Legislature. Language providing for the budget amendment process to be used to make funds available through a project's construction is deleted, since expenditures will not be appropriated.

Subsection (8) is amended to delete language providing for the budget amendment process to be used to make funds available for the loan loss insurance reserve authorized in section 420.507, F.S., since expenditures will not be appropriated.

Section 14. Section 420.5088, F.S., relating to the Florida Home ownership Assistance Program, is amended to reflect the creation of the Corporation. Subsection (2)(h) is amended to delete Department staff from review committees established to evaluate and rank program applications.

Subsection (5) is amended to dissolve the Florida Homeowner Assistance Trust Fund and to authorize the Corporation to establish with a qualified public depository meeting the requirements of chapter 280, F.S., a Florida Home ownership Assistance Fund, which will be administered by the Corporation. All amounts held in the Florida Homeowner Assistance Trust Fund on January 1, 1989, must be transferred to the Corporation for deposit in the new fund and the trust fund must be closed.

Subsection (5) also provides that expenditures from the Florida Home Ownership Assistance Fund are not required to be included in the Corporation's budget request or be subject to appropriation by the Legislature. Obsolete references also are repealed.

Section 15. Section 420.5089, F.S., relating to the HOME Investment Partnership Program, is amended. Subsection (1) is amended to dissolve the HOME Investment Partnership Trust Fund and to authorize the Corporation to establish with a qualified public depository meeting the requirements of chapter 280, F.S., a HOME Investment Partnership Trust, which will be administered by the Corporation. All amounts held in the HOME Investment Partnership Fund on January 1, 1989, must be transferred to the Corporation for deposit in the new fund and the trust fund must be closed.

Subsection (1) also provides that expenditures from the HOME Investment Partnership Fund are not required to be included in the Corporation's budget request or be subject to appropriation by the Legislature. Language providing for the budget amendment process to be used to make funds available through a project's construction is deleted, since expenditures will not be appropriated.

Subsection (2) is amended to incorporate into the program selection process incentives for welfare-to-work transitioning. The subsection is further amended to provide for loans to home buyers as well as housing providers. Obsolete language related to the first year of the program is deleted.

A new subsection (3) is created to reflect current use of funds as authorized by federal regulations. The subsection authorizes the Corporation to make loans to home buyers in connection with the Corporation's single family mortgage revenue bond program.

A new subsection (4) is created to allow the Corporation to approve projects located in a state or federally declared disaster area, or demonstration projects based on approved selection criteria. Such projects may be granted or provided a HOME loan with forgivable terms.

Existing subsection (3) is renumbered subsection (5) and amended to delete specific program loan requirements to reflect changes in federal regulations and to allow the Corporation to provide requirements by rule. Subsection (4) is deleted to reflect changes in federal regulations.

Existing subsection (5) is renumbered subsection (6) and amended to provide for applications for loans under any competitive scoring process established by program rule to be approved by a review committee established by the Corporation. Specific factors the review committee is to analyze are amended to make technical changes, include consideration of local match, conform to changes in federal regulations, and permit use with other programs.

Existing subsection (6) is renumbered subsection (7) and amended to provide for the Corporation board to approve the final ranking of applications and decide which applicants become participants based on the scores received in the ranking. Language providing for the board to also consider further review of the applications and the recommendations of the review committee is deleted. The subsection provides for the actual loan amount to be determined pursuant to rule and the Notice of Funding Availability.

Existing subsection (7) is renumbered subsection (8) and amended to make technical changes, reflect changes in federal regulations, and permit use of the program with other programs administered by the Corporation.

Existing subsection (8) is renumbered subsection (9) and amended to make technical and clarifying changes. Current authorization to foreclose on any mortgage or security interest if a default on a loan occurs is amended to authorize the Corporation to cause a foreclosure on any mortgage or security interest.

Existing subsections (9) and (10) are renumbered subsections (10) and (11) and amended to make technical changes.

Section 16. Section 420.509, F.S., relating to bonds, is amended to reflect the creation of the Corporation and to make technical changes.

Subsection (1) is amended to authorize the Corporation to issue bonds on its own behalf. Language applying the provisions of the State Bond Act to the issuance of the Corporation's revenue bonds is deleted.

Subsection (2) is amended to provide for the State Board of Administration to determine the fiscal sufficiency of the Corporation's revenue bonds. The subsection authorizes the State Board of Administration to delegate to its executive director the authority to perform this function without further review of the agency. The fiscal sufficiency determination is limited to a review of the matters essential to making the determinations required by section 16, Article VII of the State Constitution. The executive director is required to report annually to the State Board of Administration and the Legislature regarding the number of bond issues considered and the determinations made.

Subsection (3) is amended to authorize the Corporation to issue bonds rather than the current practice of the Division of Bond Finance issuing the bonds on behalf of the Corporation.

A new subsection (4) is added to establish provisions and controls related to the Corporation's issuance of bonds. The bonds of the Corporation may bear interest at a rate or rates not exceeding the interest rate limitation set forth in section 215.84(3), F.S., unless authorized by the State Board of Administration. The subsection authorizes bond payment at maturity or redemption, and provides for the determination of the place of payment by board resolution.

A new subsection (5) is added to authorize officers of the Corporation to sign bonds, as authorized by board resolution, provide for manual and facsimile signatures, and provide for the validity of the officer's signature following cessation of employment as an officer.

A new Subsection (6) is added to declare all bonds of the corporation are negotiable instruments under the Uniform Commercial Code.

A new subsection (7) is added to require certification of all bonds by the secretary of the board attesting to board authorization of the issue consistent with the requirements of this act.

A new subsection (8) is added to authorize the Corporation to issue bond anticipation notes in accordance with section 215.431, F.S., and to provide rights of note holders.

A new subsection (9) is added to authorize the Corporation to issue interim bonds prior to the preparation of definitive bonds, to authorize the exchange of temporary bonds, and to authorize the replacement of damaged, lost, or stolen bonds.

Existing subsection (4), which requires a debt service account, is deleted.

Existing paragraph (a) of subsection (5), applying the provisions of the State Bond Act to the issuance of bonds under chapter 420, F.S., is repealed. Existing paragraph (b) is renumbered subsection (10).

Existing subsection (6) is renumbered subsection (11) and amended to reflect the authority of Corporation to issues its own bonds.

Subsection (7) is renumbered subsection (12) and amended to replace the requirement for the sale of bonds consistent with the State Bond Act generally with a specific requirement for sale of bonds pursuant to section 215.68, F.S., relating to the issuance of bonds, form, maturity date, execution, and sale. Language in paragraph (c) requiring that in the event of a failure to comply with the provisions of this section relating to negotiated sales, all future bonds must be sold at public sale, is repealed.

Existing subsection (8) is renumbered subsection (13) and amended to reflect the creation of the Corporation.

Existing subsection (9) is renumbered subsection (14).

Existing subsection (10) is renumbered subsection (15) and amended to reflect the creation of the Corporation and its authority to issue its own bonds.

Existing subsection (11) is renumbered subsection (16) and amended to reflect the creation of the Corporation and its authority to issue its own bonds.

Existing subsection (12) is renumbered subsection (17) and amended to reflect the creation of the Corporation.

Existing subsection (13) is renumbered subsection (18) and amended to reflect the creation of the Corporation.

Existing subsection (14) is renumbered subsection (19).

Section 17. Section 420.5091, F.S., relating to the HOPE program, is amended to reflect the creation of the Corporation and to reflect the change from the HOME investment Partnership Trust Fund to the HOME Investment Partnership Fund.

Section 18. Section 420.5092, F.S., relating to the Florida Affordable Housing Guarantee Program, is amended. Subsections (1), (2), (3), (4), (5), (6), (7), (8), (9), and (10) are amended to reflect the creation of the Corporation.

Subsections (5) is amended to permit full doc stamp revenues in the State Housing Trust Fund to be accessed in the event of a deficit.

Paragraph (a) of subsection (6) is further amended to permit full doc stamp revenues in the State Housing Trust Fund to be accessed to maintain the debt service reserve.

Paragraph (b) of subsection (6) is further amended to permit full doc stamp revenues in the State Housing Trust Fund to be accessed if needed for claims paying obligations.

Section 19. Section 420.5099, relating to the allocation of the low-income housing tax credit, is amended to reflect the creation of the Corporation.

Existing subsection (5) is amended to apply current language to ad valorem assessment of affordable housing projects. The existing subsection provides that neither the tax credits, nor the value of the equity generated by tax credits allocated to or invested in low-income housing tax credit developments, shall be considered as income to the property. The subsection currently provides that the rental income from rent restricted

units in a low-income tax credit development shall be the actual rents charged. This language is amended to require the rental income from rent restricted units in a low-income tax credit development be valued given due consideration to all limitations imposed by federal, state, and local law, or any other limitation running with the land.

Section 20. Section 420.51, F.S., providing that state and local governments are not liable on bonds or notes, is amended to reflect creation of the Corporation.

Section 21. Section 420.511, F.S., relating to the annual report, is amended to reflect the creation of the Corporation. Subsection (1) requires the Corporation to develop a business plan for the provision of affordable housing for the state. The plan may not be inconsistent with the strategic plan prepared pursuant to provision (2), and must contain the following specific performance measures:

- (a) the ability of low and moderate income Floridians to access housing that is decent and affordable;
- (b) the continued availability and affordability of housing financed by the corporation to target populations;
- (c) the availability of affordable financing programs to increase individual access to housing and stimulate private production of affordable housing;
- (d) the stimulus of economic activity created by the affordable housing finance programs administered by the Corporation;
- (e) the establishment and maintenance of efficiencies in the delivery of affordable housing;
- (f) such other measures as directed by the Corporations' board of directors.

Subsection (2) requires the Corporation, in equal partnership with the Department, to develop annually a strategic plan for the provision of affordable housing in Florida as part of the Department's strategic plan required by chapter 186, F.S. The plan is required to include provisions that maximize the abilities of the Corporation and the Department to implement the state housing strategy established under section 420.0003, F.S., to respond to federal housing initiatives, and to develop programs in a manner that is more responsive to the needs of the public and private partners.

The strategic plan must be developed on a schedule consistent with that established by sections 186.021 and 186.022, F.S. The executive director or designee is to serve as the Corporation's representative to achieve a coordinated and integrated planning relationship with the Department.

A new subsection (4) is added to require that both the Corporation's business plan and annual report recognize the different fiscal periods under which the Corporation, the state, the federal government, and local governments operate.

Section 22. Section 420.512, F.S., is amended to reflect the creation of the Corporation and to revise provisions relating to conflicts of interest.

A new subsection (3) prohibits fund raising activities by members, officers, and covered employees from service providers.

A new subsection (4) prohibits members, officers, and covered employees from competing in corporate programs.

A new subsection (5)(a) provides that service providers may not make contributions in any amounts for or on behalf of candidates for Governor, nor make a contribution in excess of \$100 to any candidate for a member of the State Board of Administration other than the Governor while the service provider is included in an applicant pool, while the service provider provides services to the Corporation, and for the longer of a period of 2 years thereafter or for a period through the next general election for Governor.

New Subsection (5)(b) prohibits service providers from participating in fundraising activities for or on behalf of candidates for Governor in Florida while the service provider is included in an applicant pool, while the service provider provides services to the Corporation, and for the longer of a period of 2 years thereafter or for a period through the next general election for Governor.

New subsection (5)(c) requires service providers to provide the Corporation a statement that they have not contributed to candidates for Governor or contributed in excess of the amounts allowed by the section for a Cabinet position or engaged in prohibited fundraising activities since the effective date of this section or during the 24 months preceding the service providers' application to provide services to the corporation, whichever period is shorter.

New subsection (5)(d) prohibits service providers from engaging in prohibited business solicitation communications with officers, members, or covered employees of the Corporation.

New subsection (5)(e) provides for service providers to seek guidance regarding these requirements by requesting a declaratory statement in accordance with the applicable rule and section 120.565, F.S.

New subsection (5)(f) directs the Corporation to consider the magnitude of a violation and whether there has been a pattern of violations in determining whether to terminate or decline to enter into contracts with a service provider who violates the provisions of this section.

A new subsection (6) is added to require solicitations for service providers to require the service provider to formally acknowledge the conditions in subsection (5) and to agree, if selected, to abide by the conditions.

A new subsection (7) is added to require each contract or other form of agreement to retain a service provider to provide services to incorporate the conditions in subsection (5) and a provision allowing unilateral cancellation by the Corporation for refusal of the service provider to comply with the terms of eligibility.

Existing subsection (3), which prohibits a financial advisor to the Agency serving as an underwriter for the Agency's bonds within 2 years of having been its financial advisor, is repealed.

Section 23. Section 420.513, F.S., relating to exemption from taxes and eligibility as investment, is amended to exempt from taxation by the state and its political subdivisions the property of the Corporation, the transactions and operations thereof, the income therefrom, and the bonds of the corporation, together with all notes, mortgages, security agreements, letters of credit, or other instruments that arise out of or are given to secure the repayment of bonds issued in connection with the financing of any housing development under part V of chapter 420, F.S., as well as the interest thereon and income therefrom.

Section 24. Section 420.514, F.S., relating to the Agency's corporate existence, is amended to reflect the creation of the Corporation.

Section 25. Section 420.523, F.S., relating to the purpose of the Predevelopment Loan Program, is amended to change the name of the Housing Predevelopment Trust Fund to the Housing Predevelopment Fund.

Section 26. Section 420.525, F.S., relating to the Predevelopment Loan Program, is amended to reflect the creation of the Corporation.

Subsection (1) is amended to dissolve the Housing Predevelopment Trust Fund and to authorize the Corporation to establish with a qualified public depository meeting the requirements of chapter 280, F.S., a Housing Predevelopment Fund, which will be administered by the Corporation. All amounts held in the Housing Predevelopment Trust Fund on January 1, 1989, must be transferred to the Corporation for deposit in the new fund and the trust fund must be closed.

Subsection (1) also provides that expenditures from the Housing Predevelopment Fund are not required to be included in the Corporation's budget request or be subject to appropriation by the Legislature. Language providing for the budget amendment process to be used to make funds available through a project's predevelopment period is deleted, since expenditures will not be appropriated.

Section 27. Section 420.526, F.S., relating to the Predevelopment Loan Program, is amended to reflect the creation of the Corporation and the change in the name of the program fund.

Section 28. Section 420.527, F.S., relating to the Predevelopment Loan Program application procedure, is amended to reflect the creation of the Corporation. Subsection (4) also is amended to exclude Department staff from program review committee.

Section 29. Section 420.528, F.S., relating to the Predevelopment Loan Program and Agency rules and annual report, is amended to reflect creation of the Corporation and to transfer rulemaking authority and report obligations to the Corporation.

a new subsection (3) is added to require the Corporation to submit, with the annual report required by section 420.511, F.S., a copy of an annual financial audit of its accounts and records conducted by an independent certified public accountant performed in accordance with generally accepted auditing standards and government auditing standards.

Section 30. Section 420.529, F.S., relating to the Predevelopment Loan Program and defaults on loans by sponsors, is amended to reflect the creation of the Corporation and the change in the name of the program fund.

Section 31. Subsection (4) of section 420.602, F.S., is repealed, present subsection (5) is redesignated as subsection (4), and a new subsection (5) is added. The section deletes the definition of the Agency and defines the Corporation.

Section 32. Section 420.606, F.S., relating to training and technical assistance programs, is amended. Subsection (3) is amended to require, to the maximum extent feasible, the entity providing the necessary expertise be recognized by the Internal Revenue Service as a nonprofit tax-exempt organization. Its primary mission must be the provision of affordable housing training and technical assistance. It must have an ability to provide training and technical assistance statewide, and a proven track record of successfully providing training and technical assistance under the Affordable Housing Catalyst Program.

Subsection (4) is renumbered paragraph (c) of subsection (3) and amended to delete a specific requirement to provide technical assistance for the federal HOPE program and to expand the scope of technical assistance provided beyond the State Housing Initiative Partnership and HOME Investment Partnership programs to encompass other state affordable housing programs.

Section 33. Subsection 420.9071, F.S., which provides definitions for the State Housing Initiative Partnership Program (SHIP) is amended.

The definition of "adjusted for family size," is amended to conform to renumbering of other subsections referenced.

Subsection (2), which defines "adjusted gross income," is deleted.

Subsection (3), which defines "affordable," is renumbered subsection (2) and amended to conform to the new definition of annual gross income and to renumbering of paragraphs referenced and to provide that determination of affordability in excess of 30 percent be made by an institutional mortgage lender.

Subsection (5), which defines "agency," is deleted.

New subsection (4) defines "annual gross income."

Subsection (6) is renumbered subsection (5) and amended to correct a reference to the local housing assistance trust fund.

Subsection (7) is renumbered subsection (6).

New subsection (7) defines the "Corporation."

Subsection (8), which defines "Department," is deleted.

Subsection (9), which defines "eligible housing," is renumbered subsection (8) and amended to correct a spelling error and glitch in program reference.

Subsection (10) is renumbered subsection (9).

Subsection (11), which defines "eligible person," is renumbered subsection (10) and amended to apply the definition to "eligible household," to correct references to income limits, and to conform to new definition of income.

Subsection (12), which defines "eligible sponsor," is renumbered subsection (11) and amended to correct reference.

Subsection (13), which defines "grant," is renumbered subsection (12) and amended to make a technical change.

Subsection (14), which defines "loan," is renumbered subsection (13) and amended to make a technical change.

Subsection (15), which defines "local housing assistance plan," is renumbered subsection (14) and amended to redefine components of the plan for consistency with revisions to sections 420.9072, 420.9075, and 420.9076, F.S., which consolidate the local housing assistance plan and the local housing incentive plan.

Subsection (16), which defines "local housing assistance program," is renumbered subsection (15) and amended to change the term defined to "local housing assistance strategies."

A new subsection (16) is added to define "local housing incentive strategies."

Subsection (18), which defines "local housing partnership" is amended to clarify intent that participants in the partnership must include affordable housing builders and developers, real estate professionals, and advocates for low-income persons.

Subsection (19), which defines "low-income person," is amended to apply the definition to the term "low-income household" and to conform the definition to the new definition of income.

Subsection (20), which defines "Moderate-income person," is amended to apply the definition to "moderate-income household," and to conform the definition to the new definition of income.

New subsection (22) defines "plan amendment."

Subsection (22) is renumbered subsection (23).

New subsection (24) defines "program income."

New subsection (25) defines "recaptured funds."

Subsection (24), which defines "student," is deleted.

Subsection (27) defines ""sales price" or "value."

Subsection (28), which defines "very-low-income person," is renumbered subsection (28) and amended to apply the definition to "very-low-income household," and to revise the definition to conform to the new definition of income.

Section 34. Section 420.9072, F.S., relating to the creation of the SHIP program, is amended to reflect the creation of the Corporation. The statement of program purpose is amended to state legislative intent that the program further implementation of the housing policies of the local government comprehensive plan specific to affordable housing.

Subsection (1)(a) is amended to state intent regarding participation of certain interests in the local housing partnership for purpose of the development and implementation of local housing assistance plans, as well as to encourage use of interlocal agreements among small counties.

Subsection (2)(a) is amended to delete the requirement for a local government to submit a copy of the Local Housing Assistance Plan to the Department, and to require only submission to the Corporation.

A new subparagraph 2. is added to (2)(a) to require amendment of the local housing assistance plan within 12 months of adoption to incorporate local housing incentive strategies.

Existing subparagraph 2. of (2)(a) is renumbered subparagraph 3. and amended to require that local housing incentives adopted as part of the local housing assistance plan be implemented by amendment of local land development regulations or other appropriate local process within 24 months of adoption. The subparagraph also requires counties and cities with existing housing incentive plans to complete a self-check on the status of implementation and to report their findings in the required annual report.

Subsection (2)(b) is amended to make revisions to requirements for the adoption of an ordinance to establish the local SHIP program. The revisions provide for adoption of the local housing assistance plan by resolution and clarify the requirement that existing ordinances be revised as needed to conform to amendments to this section.

Subsection (3) is amended to split the subsection into three paragraphs. Technical and conforming changes are made. Local governments are only required to submit the local housing assistance plan to the Corporation, no longer the Department. The revisions provide that new plans that conform to the requirements of this act shall be adopted prior to the expiration of the current local housing assistance plan. Obsolete language is deleted.

Subsections (5) and (7), as well as additional provisions, are amended to change the reference "local housing assistance program" to local "housing assistance plan."

Subsection (6) is amended to correct a reference to the Local Government Housing Trust Fund and to conform to revisions made to section 420.9078, F.S.

Subsection (9) is amended to require the Corporation to adopt rules to implement sections 420.907 - 420.9079, F.S. Currently, the subsection provides that the Agency may adopt rules.

Section 35. Section 420.9073, F.S., relating to local housing distributions, is amended to revise the minimum guaranteed allocation from \$250,000 to \$350,000, and to delete obsolete language.

Section 36. Section 420.9075, F.S., relating to local housing assistance programs, is amended to change the catch line to "Local housing assistance plans; partnerships.

Paragraph (a) of subsection (1) is amended to make technical revisions and to include the elderly in the reference to target populations with special housing needs.

Paragraph (b) of subsection (1) is amended to provide that a local housing assistance plan may allocate funds to implement affordable housing policies or the housing element of the local government comprehensive plan.

Paragraph (a) of subsection (2) is amended to require each county to encourage involvement of specified groups. Current language encourages such involvement. Current language providing that local partnerships may involve specified groups is amended to state they should involve such groups. Builders, advocates for low-income persons, and real estate professional are added to the specified groups.

Paragraph (a) of subsection (3) is amended to clarify requirements for qualification systems and selection criteria for eligible sponsors and eligible persons.

Paragraph (b) of subsection (3) is amended to clarify requirements for advertising notice of funding availability and to provide that no advertisement is needed when no funds are available due to a waiting list.

Paragraph (c) of subsection (4) is amended to clarify that the sales price or value limit is that established by the United States Treasury proclamation.

Paragraph (d) of subsection (4) is amended to change the set aside requirement from 30 percent of units assisted to 30 percent of funds allocated.

Paragraph (g) of subsection (4) is amended to require that local plans establish recapture requirements for assisted rental housing and to provide parallel sentence structure in drafting.

Paragraph (g) of subsection (4) is amended to clarify and to provide parallel structure in drafting.

Paragraph (i) of subsection (4) is amended to require local plans, rather than the adopting resolution, to establish the maximum SHIP assistance per unit.

Paragraph (j) of subsection (4) is amended to declare that there is no intent to prohibit use of SHIP funds for mixed-income rental developments.

Paragraph (k) of subsection (4) is amended to provide additional flexibility in the use of program income.

Subsection (5) is amended to clarify that the local housing distribution, program income, and recaptured funds must be used only for implementing the local housing assistance program.

Subsection (6) is amended to provide that income derived from the use of the local housing distribution shall be deposited into the local housing assistance trust fund, and to permit participating local governments to use up to 5 percent of program income for administration. Small counties as defined in section 120.52(170 and cities receiving allocations up to \$350,000 will be allowed to use up to 10 percent of program income for administrative costs.

Subsection (7) is amended to split the subsection into two subsections; subsection (7) addresses technical assistance and new subsection (8) addresses compliance monitoring. Subsection (7) is amended to clarify that the Corporation shall provide technical assistance addressing both housing assistance programs and regulatory reforms. Subsection (8) retains existing compliance language.

Existing subsection (8) is renumbered subsection (9) and amended to change the due date for annual reports from November 15 to September 15; to establish the reporting period ending date as June 30 immediately preceding the due date; to require the chief local elected official or designee to certify accuracy and completeness of the reports and the status of implementation of housing incentive strategies; to require separate reports for each fiscal year in which a local government received SHIP disbursements; to delete the requirement to include "rural residents" in the demographic information portion of the report; to require that counties report assistance to units within the incorporated areas separately; and to make technical and clarifying changes.

Existing subsection (9) is renumbered subsection (10) and amended to provide for a public review and comment on reports prior to transmittal to the Corporation. The subsection also requires transmittal of all public comments and the local response to the Corporation.

Existing subsection (10) is renumbered subsection (11) and amended to delete the requirement that the Agency provide comments based on its review of the annual reports to the Department. The subsection requires the inclusion of such comments in the Corporation's annual report to the Legislature and the Governor pursuant to section 420.511, F.S.

Existing subsection (11) is renumbered subsection (12) and amended to allow the Corporation to rely on public comment in determining whether a local government has established a pattern of violations of SHIP requirements for the purpose of terminating funds.

Language is added in paragraph (b) of subsection (12) authorizing the Corporation to terminate funds for failure to implement housing incentives. The language permits local governments 30 days to respond to a Corporation notice of termination of funds, and provides for the Corporation to consider extenuating circumstances. The Corporation is

authorized to enter into local extension agreements. Provision is made for termination of funds in the event extension time frames are not met.

Section 37. Section 420.9076, F.S., relating to adoption of affordable housing incentive plans, is amended to change the catch line to "Affordable housing incentive strategies."

Subsection (1) is amended to require that within 12 months after the original adoption of the local housing assistance plan, participating local governments amend their plan to include local housing incentive strategies as defined in section 420.9071(16), F.S.

Subsection (2), which establishes the composition of affordable housing advisory committees, is amended to revise required representation on the committees. Current requirements are revised to provide for individuals to be experienced with affordable housing. A new paragraph (f) is added to provide for a member who is actively engaged as a not-for-profit provider of affordable housing. Paragraph (h) is added to provide for a member who actively serves on the local planning agency pursuant to section 163.3147, F.S. Paragraph (i) is added to provide for a member who is a citizen who resides within the jurisdiction of the local governing body making the appointments. Provision is made for instances where a county or municipality is unable to appoint a citizen actively engaged in specified activities in connection with affordable housing.

Subsection (4) is amended to revise local housing incentives which a local government's affordable housing advisory committee must consider in developing local housing incentive strategies. The requirement that a local government document cost reductions expected to be achieved from implementation of the local housing incentives is deleted.

Subsection (5), which provides for affordable housing advisory committee adoption of recommendations for a housing incentive plan, is amended to refer to local housing incentive strategies.

Subsection (6), requires that within 90 days of receipt of the local housing incentive strategies recommendations from an advisory committee, a participating local governing body adopt an amendment to its local housing assistance plan to incorporate the local housing incentive strategies it will implement within its jurisdiction. The amendment, at a minimum, must include the local housing incentive strategies as defined in section 420.9071, F.S.

Subsection (7), requires each local governing body to notify the Corporation of its adoption of an amendment of its local housing assistance plan to incorporate housing incentive strategies. Current provisions providing for termination of funds are continued.

Section 38. Section 420.9078, F.S., relating to state administration of remaining housing distribution funds, is amended to provide that when appropriated funds remain in the Local Government Housing Trust Fund, the Corporation shall distribute the funds according to specified directions.

New subsection (1) authorizes the Corporation to distribute any remaining funds to counties or eligible municipalities impacted by a disaster, upon formal declaration by the Governor.

New subsection (2) provides that if subsection (1) does not apply, the Corporation is to distribute any remaining funds proportionately among local governments that have fully spent their distributions on eligible activities and have currently approved local housing assistance plans.

Existing provisions requiring a competitive funding cycle with remaining funds are deleted.

Section 39. Section 420.9079, F.S., relating to the Local Government Housing Trust Fund, is amended to provide for the Corporation to administer the trust fund. The section requires that all proceeds derived from the investment of trust fund monies be credited to the trust fund. New language is added prohibiting appropriations to the Corporation from the trust fund for the purposes of administration or personnel costs.

The section is amended to allow appropriation of up to \$200,000 to the Corporation from the trust fund exclusively for the purpose of overseeing local compliance with program requirements.

Section 40. Section 420.5085, F.S., relating to Energy conservation loans, is repealed. Section 420.5094, F.S., relating to an obsolete provision regarding the single-family mortgage bond program, also is repealed.

Section 41. Section 239.505, F.S., relating to Florida constructive youth programs, is amended to change an obsolete reference to the Farmers Home Administration to the United States Department of Agriculture - Rural Development.

Section 42. Subsection (5) of section 381.0081, F.S., relating to migrant labor camps, is amended to change references to the State Apartment Incentive Loan Trust Fund to the State Apartment Incentive Loan Fund.

Section 43. An effective date of January 1, 1997 is provided. The section declares that a transitional period shall occur prior to the transfer of all assets and liabilities from the Agency to the Corporation on January 1, 1998.

During the transitional period, by action of the members of the Agency on the Corporation's behalf, the Corporation shall be entitled to execute contracts as an entity in organization and do any other things necessary to assist in the formal establishment of the Corporation as a working organization on January 1, 1998.

The section requires the Agency's auditors to conduct a final audit of the Agency for the period beginning July 1, 1997, and ending December 31, 1997. The Corporation's auditors are to conduct an audit of the Corporation for the period beginning January 1, 1998, and ending June 30, 1998.

The Agency is entitled to spend unencumbered amounts deposited into the Florida Housing Finance Agency Trust Fund for payment of transition and start-up costs with respect to the establishment of the Corporation.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

<u>Expenditures</u>	<u>1997-98</u>	<u>1998-99</u>
Florida Housing Finance Agency (Corporation) SHIP rule making	\$500	0

2. Recurring Effects:

<u>Revenues</u>	<u>1997-98</u>	<u>1998-99</u>
Florida Housing Finance Agency (Corporation) SHIP compliance monitoring Local Government Housing Trust Fund	\$200,000	\$200,000
Department of Community Affairs (DCA) Administrative Fee from Agency to DCA		(725,986)
Legal Services fee From Agency to DCA		(79,788)

<u>Expenditures</u>	<u>1997-98</u>	<u>1998-99</u>
Florida Housing Finance Agency (Corporation) SHIP compliance monitoring Local Government Housing Trust Fund	\$200,000	\$200,000
Incremental Accounting Services		30,000
Legal Services		79,788
Administrative Fee to DCA		(725,986)
Legal Services From DCA		(79,788)
State/Federal Relations Assessment Savings		(3,146)
Estimated Additional Savings		(250,000)

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

<u>Revenues</u>	<u>1997-98</u>	<u>1998-99</u>
Florida Housing Finance Agency (Corporation) Department of Community Affairs	\$200,000	\$200,000 (805,774)

<u>Expenditures</u>	<u>1997-98</u>	<u>1998-99</u>
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Florida Housing Finance Agency (Corporation)

\$200,500 (\$749,132)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Indeterminate. Local governments will be responsible for administering changes to the SHIP program at the local level. No estimated cost is available. The Agency states that because the bill is similar to exiting requirements, it should not result in a substantial impact on participating local governments.

2. Recurring Effects:

Provisions in the bill increasing the minimum guaranteed SHIP allocation from \$250,000 to \$350,000 will increase some local government allocations. Other local governments will receive decreased allocations.

Section 19 of this bill will lower appraisals of low-income housing tax credit developments for ad valorem taxation purposes. It is estimated that the bill will result in a \$10.7 million reduction in revenues to local governments in FY 1998-99. The provision in the bill providing that "neither the tax credits, nor the value of the equity generated by tax credits, allocated to or invested in low-income housing tax credit developments, shall be considered as income to the property" will result in an indeterminate reduction in revenues to local governments in FY 1998-99.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Any reduction in revenues to local governments resulting from section 19 of this bill could result in a shift in tax burden to other property owners.

2. Direct Private Sector Benefits:

The Agency believes the bill will result in increased availability of funds to increase, promote, and preserve the affordable housing stock, and will increase the number of construction-related jobs. Additionally, the Agency believes the provisions in the bill streamlining processes, especially those relating to disbursement of funds, will reduce the cost of borrowing money and the cost for delivering affordable housing.

Section 19 of this bill will reduce ad valorem assessments of affordable housing programs, which will result in a decrease in ad valorem taxes.

3. Effects on Competition, Private Enterprise and Employment Markets:

By lowering property tax liabilities for LIHTC program properties, section 19 of the bill will improve the financial position of LIHTC property owners. The bill also may make LIHTC program developments more financially appealing and increase competition for the available state allocation of tax credits.

D. FISCAL COMMENTS:

Florida Housing Finance Agency/Corporation, Catalyst Program, & State Housing Partnership Program

With the exception of section 19 of the bill, which is discussed below, the fiscal research presented is based solely on information submitted by the Florida Housing Finance Agency and the Department of Community Affairs.

The Agency states the bill will result in overall cost savings of \$869,344 for the Agency. In addition to a net savings of \$616,198 relating to the current administrative assessment paid to the Department and a \$3,146 savings from the State/Federal Relations assessment, the estimate assumes \$250,000 in cost savings from the following:

- * Flexibility with procurement;
- * performance based incentive compensation to employees;
- * avoidance of penalties associated with prompt payment statute;
- * reduction in paperwork associated with travel, warrants, routing of contracts, personnel issues, budget issues, etc.;
- * economies or savings associated with consolidated handling of flow of funds.

Low Income Housing Tax Credit Program/Ad Valorem Taxes

This bill has not been reviewed by the Fiscal Impact Conference; therefore, the estimated fiscal impact is preliminary. The estimated fiscal impact on local government is based upon several assumptions. The bill requires property appraisers to give due consideration to all limitations imposed by federal, state, and local law or any other limitation running with the land when valuing the rental income from rent-restricted units in a LIHTC development. The estimate assumes that all LIHTC units will be appraised based on an income approach where income from rent restricted units will be considered the actual rent charged.

The analysis assumes 45,000 LIHTC units will exist in fiscal year 1998-99 and relies on assumptions used to estimate the fiscal impact of HB 2039 during the 1996 Legislative Session. A current average assessment per apartment of \$29,961 is assumed, based on figures developed for the 1995 legislation. A 95 percent occupancy rate is assumed. The estimate assumes an average local government millage rate of 21.65. Finally, the

estimate assumes the bill will decrease ad valorem tax liabilities by \$250/unit based on figures developed for the 1995 legislation.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

While this bill may require expenditures by counties and municipalities, it is assumed these expenditures are insignificant. Therefore, the bill is exempt from this provision.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill will reduce the revenue raising authority of municipalities by an indeterminate amount. Article VII, Section 18(b) of the Florida Constitution provides:

(b) Except upon approval of each house of the legislature by two-thirds of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989.

Subsection (d) of section 18 of Article VII of the State Constitution provides an exemption for laws having an insignificant impact (\$1.4 million).

Section 19 of the bill prohibits property appraisers from considering tax credits or the value of the equity generated by tax credits as income to the property when considering ad valorem assessment of affordable housing programs. Property appraisers who under current law consider such tax credits as income to the property will be prohibited from doing so if this legislation becomes law. This will result in an indeterminate reduction in revenue raising authority for counties and cities.

Section 19 also requires property appraisers to give due consideration to all limitations imposed by federal, state, and local law or any other limitation running with the land when valuing the rental income from rent-restricted units in a LIHTC development. If it is assumed property appraisers will interpret this provision to require them to appraise all LIHTC units based on an income approach where income from rent restricted units will be considered the actual rent charged, the bill would result in an estimated reduction in the revenue-generating authority for counties and municipalities of \$9.977 million in FY 1998-99. However, property appraisers may interpret this provision as only requiring them to give due consideration, not necessarily to appraise all LIHTC units based on an income approach where income from rent restricted units will be considered the actual rent charged.

In summary, the bill would result in an indeterminate reduction in revenue raising authority for counties and cities. The bill must be enacted by two-thirds vote of both houses of the Legislature.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill authorizes a \$200,000 appropriation from the Local Government Housing Trust Fund to the Florida Housing Finance Agency (Corporation) for the purpose of overseeing local compliance with program requirements. Such an appropriation would reduce the percentage of documentary stamp tax revenues to counties and municipalities. However, the amount is insignificant. Therefore, the bill is exempt from this provision.

V. COMMENTS:

Low Income Housing Tax Credit Program/Ad Valorem Taxes/Constitutional Issues

Section 19 of this bill requires that in considering ad valorem assessment of affordable housing programs, that neither the tax credits nor the value of the equity generated by tax credits allocated to or invested in low-income housing tax credit developments be considered as income to the property. This requirement may be subject to judicial scrutiny as a possible violation of Article VII, section 4 of the Florida Constitution, which requires "a just valuation of all property for ad valorem taxation..." The question before a court would be whether the tax credits or the value of the equity generated by tax credits allocated to or invested in low-income housing tax credit developments is income to the property.

While as noted in the Present Situation the statutes outline the factors that property appraisers are to consider in deriving just valuation, the Florida Supreme Court has ruled that the factors used and the weight given to any factor or method of valuation is at the discretion of the property appraiser. Valencia Center, Inc. v. Bystrom, 543 So. 2d 214 (Fla. 1989). The court has also ruled that when "determining the fair market value of income-producing property which is encumbered by a long-term submarket lease . . . the resulting valuation must represent the value of all interests in the property -- in other words, the fair market value of the unencumbered fee." Schultz v. TM Florida-Ohio Realty Ltd., 577 So. 2d 573 (Fla. 1991).

In Valencia Center, Inc. v. Bystrom, the Florida Supreme Court found that:

"The just valuation at which property must be assessed under the constitution and section 193.011 is synonymous with fair market value.... In arriving at fair market value, the assessor must consider, but not necessarily use, each of the factors set out in section 193.011. The particular method of valuation, and the weight to be given each factor, is left to the discretion of the assessor, and his determination will not be disturbed on review as long as each factor has been lawfully considered and the assessed value is within the range of reasonable appraisals."

In Schultz v. TM Florida-Ohio Realty Ltd., the Florida Supreme Court ruled that

"[W]hen determining the fair market value of income-producing property which is encumbered by a long-term submarket lease...the resulting valuation must represent the value of all interests in the property -- in other words, the fair market value of the unencumbered fee." Schultz v. TM Florida-Ohio Realty Ltd., 577 So. 2d 573 (Fla. 1991).

Finally, in Robbins v. Summit Apartments, Ltd., 586 So. 2d 1068 (Fla.App 3 Dist. 1991)(Review Denied 592 So. 2d 692 (Fla. 1991)), the taxpayer contended that the fair market value of its property -- an apartment complex regulated by the United States Department of Housing and Urban Development (HUD), including rent controls -- should be reduced due to the HUD restrictions which limited the income derived from the property. The trial court had ruled in favor of the taxpayer, but the appellate court reversed and remanded the case with instructions. The court found that for purposes of assessing tax against the apartment complex, the valuation must be based on the fair market value of unencumbered fee. The court also found that:

"..... the legislature in our state requires utilization of all of the statutory criteria outlined in section 193.011 to determine the just valuation of income producing property. Therefore we are not persuaded by the taxpayer's argument. Finally, even if a policy reason exists for reducing the valuation on HUD regulated properties, this court is required to follow the controlling decisions of the Florida Supreme Court."

Limitation on Campaign Contributions/Constitutional Issues

Section 22 of this bill provides that service providers may not make contributions in any amounts for or on behalf of candidates for Governor, nor make a contribution in excess of \$100 to any candidate for a member of the State Board of Administration other than the Governor while the service provider is included in an applicant pool, while the service provider provides services to the Corporation, and for the longer of a period of 2 years thereafter or for a period through the next general election for Governor. The section also prohibits service providers from participating in fundraising activities for or on behalf of candidates for Governor in Florida while the service provider is included in an applicant pool, while the service provider provides services to the Corporation, and for the longer of a period of 2 years thereafter or for a period through the next general election for Governor.

The section also requires service providers to provide the Corporation a statement that they have not contributed to candidates for Governor or contributed in excess of the amounts allowed by the section for a Cabinet position or engaged in prohibited fundraising activities since the effective date of this section or during the 24 months preceding the service providers' application to provide services to the corporation, whichever period is shorter.

These provisions may be subject to judicial scrutiny as possibly violating First Amendment rights, especially considering the fact that the prohibition includes periods of time before and after the person's involvement with the Agency. It is well established that making campaign contributions is a form of speech and is protected under the First Amendment to the United States Constitution.

Both the United States Supreme Court and the Florida Supreme Court have held that although campaign contributions are a form of protected speech, the states may still prohibit some contributions under certain circumstances. In order to impose a prohibition on contributions, the state must prove two things: (1) that it has a compelling interest; and (2) that the prohibition is narrowly tailored to meet that interest. In the instant case, the stated purpose for the prohibition is to avoid the appearance or perception that favoritism, special dealing or political considerations are involved in the selection of service providers. This would most likely meet the compelling interest prong because the courts have said that "preventing corruption or the appearance of corruption are the only legitimate and

compelling government interests thus far identified for restricting campaign finances." see Federal Elections Commission v. National Conservative Political Action Committee, 470 U.S. 480 (1985).

The second prong of the analysis, whether the rule as drafted is sufficiently narrowly tailored, is less clear. The concern is that there not be a chilling effect on people who may have a legitimate interest in contributing to a campaign but would be discouraged from doing so because it may prohibit them from certain commercial activity in the distant future. Since this bill extends the contribution prohibition and limitation to periods of time before the person's service to the agency, this chilling effect is a possibility.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Differences Between PCS/HB 1803 and HB 1803

The PCS/HB 1803 makes numerous technical and clarifying changes to HB 1803. Major changes are summarized below:

- * The PCS amends section 420.0005, F.S., to add language providing that the certification made by the Department Secretary for the release of funds to the Corporation include the split of funds among the Department and the Corporation provided for in the Sadowski Act.
- * The PCS amends section 420.0006, F.S., to replace provisions in HB 1803 requiring referral of issues of nonperformance to a board-appointed task force with a requirement that the Department Secretary notify the Governor of the nonperformance and refer the issue to the Department's inspector general for investigation. The PCS provides that when nonperformance is due to inadequate management, the inspector general shall make recommendations regarding solutions.
- * The PCS amends section 420.504, F.S., to provide for a representative of local government on the Corporation's board of directors and to reduce the number of at-large members to two. The section also is amended to clarify that for purposes of determining the terms of members, the term commences as of the date of the first appointment for the purpose of chapter 112, F.S.
- * The PCS amends section 420.506, F.S., to provide that the Corporation's executive director shall communicate with and provide information to the Legislature with respect to the Corporation's activities. The PCS also requires the executive director to establish a contact within the Corporation to serve as a liaison with the Department's inspector general.
- * The PCS amends section 420.507, F.S., is amended to authorize the Department Secretary to include the Corporation's budget request in the Department's budget request. The PCS also authorizes appointment of an internal affairs officer for the Corporation.
- * The PCS amends section 420.511, F.S., to replace HB 1803's requirement for specific performance measures with the requirement for the Corporation to develop specific performance measures in six areas. The PCS also requires the Corporation to submit

an annual financial audit of its accounts and records conducted by an independent certified public accounting firm.

Proposed Amendments to PCS/HB 1803

The Florida Housing Finance Agency has requested the following amendments:

Amendment 1

On page 6, line 16, delete "10" and insert 5.

This amendment leaves in place the existing cap on administrative expenses of the Florida Housing Finance Agency.

Amendment 2

On page 7, line 7, remove from the bill "contained in" and insert: required by

This amendment is technical.

Amendment 3

On page 9, line 5, after "s. 215.47" insert (1) and (2), without regard to any limitation set forth therein.

This amendment restricts permitted investments authorized by reference to section 215.47, F.S., to subsections (1) and (2) of the section.

Amendment 4

On page 22, lines 18 and 19, delete said lines and insert:

(f) One citizen who is a former local government elected official.

This amendment provides for the added local government representative to be a former local government elected official.

Amendment 5

On page 25, line 31, insert new language after "employee."

This amendment clarifies provisions relating to any employees who elect to remain in the Florida Retirement System, and provides that such employees will continue to receive monthly service credit under the Florida Retirement System.

Amendment 6

On page 26, line 2, after "Affairs" insert: for the lease of state employees from such entity.

This amendment clarifies that the Corporation may enter into lease agreements with the Department of Management Service or the Department of Community Affairs for the lease of state employees.

Amendment 7

On page 36, line 6, after "agents" insert new language.

This amendment authorizes the Corporation to make contributions to the Florida Retirement System for employees who elected to retain their status as participants of the Florida Retirement System.

Amendment 8

On page 36, lines 11, and on page 36, delete "auditor" and insert affairs officer

This amendment corrects a drafting error to make references to the internal affairs officer consistent.

Amendment 9

On page 65, line 29, insert after the period: The provisions of sections 215.57 - 215.83 shall not be applicable to the corporation.

This amendment exempts the Corporation from the State Bond Act.

Amendment 10

On page 69, line 4, after "(10)(b)" insert: Bonds of the corporation may be validated pursuant to chapter 75.

The amendment clarifies that bonds of the Corporation may be validated pursuant to chapter 75, F.S., which is implied in the bill.

Amendment 1

Amendment 11

On page 82, lines 13 and 14, delete said lines, and insert: pursuant to subsection (2) and shall contain performance measures and specific performance targets for the following:

This amendment requires the Corporation business plan to include performance targets as well as performance measures.

Amendment 12

On page 84, between lines 24 and 25, insert new language.

The amendment requires the Corporation to submit, with its required annual report, a copy of an annual financial audit of its accounts and records conducted by an independent

certified public accountant performed in accordance with generally accepted auditing standards and government auditing standards.

Amendment 13

On page 89, between lines 22 and 23, insert a new bill section 27.

The amendment creates section 420.517, F.S., to provide for affordable housing and job training coordination.

Amendment 14

On page 96, lines 7-12, delete said lines.

The amendment removes from the bill a provision providing for submission of an annual audit report. Amendment 12 addresses this issue in a different location in the bill.

Representative Lynn requested the following amendment to the bill:

Amendment 15

On page 138, between lines 7 and 8, insert a new bill section.

The new section amends subsection (1) of section 189, F.S., to exclude housing finance authorities from the definition of "special district" and to exempt such authorities from the requirements of chapter 189, F.S., relating to special districts.

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

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