

**STORAGE NAME:** hb2261a.ted

**DATE:** April 11, 2000

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS  
ANALYSIS**

**BILL #:** HB 2261 (PCB CA 00-07)

**RELATING TO:** Affordable Housing

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

**TIED BILL(S):** None

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

- (1) COMMUNITY AFFAIRS (PRC) YEAS 7 NAYS 0
  - (2) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS YEAS 7  
NAYS 0
  - (3)
  - (4)
  - (5)
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**I. SUMMARY:**

This bill addresses a variety of affordable housing issues. The bill repeals the State Housing Tax Credit Program and creates the Florida Front Porch Housing Initiative to provide low-interest and deferred interest loans to provide qualified urban housing developments in Florida's front porch communities. The bill also creates the State Farmworker Housing Pilot Loan Program to provide low interest loans for the construction of affordable housing for farmworkers.

The bill modifies several current affordable housing programs, as well. The bill revises the powers of the Florida Housing Finance Corporation to allow it to reserve funds to provide a remedy for an applicant who successfully appeals a competitive application, and to allow the Corporation to designate private activity bond allocation between single family and multifamily projects. The Florida Affordable Housing Guarantee Program is modified to increase the maximum amount of revenue bonds that may be issued by the Corporation from \$200 million to \$300 million. The bill modifies the Predevelopment Loan Program to broaden the use and flexibility of the program, and updates statutory provisions relating to the Florida Affordable Housing Study Commission, including the timing of the Commission's report to the Governor and the Legislature. Under the State Housing Partnership Initiative, the bill authorizes local governments to rely on another government entity's compliance efforts with respect to the SHIP program and modifies existing purchase price limitations. The bill also revises the current low-income housing property tax exemption to ensure that housing provided through local housing finance authorities is covered under the exemption.

The bill addresses discrimination against affordable housing by prohibiting discrimination in land use decisions and in permitting of development based on race, color, national origin, sex, disability, familial status, religion, or the source of financing of a development or proposed development.

The bill increases the portion of the State's Private Activity Bond Allocation reserved for the 17 local regional pools to increase the availability of funding available for affordable housing and other authorized uses and to avoid future losses of allocation resulting from allocations not being used.

This bill repeals the State Housing Tax Credit Program. The bill does not appropriate any funds. The bill will reduce ad valorem tax revenues and the authority of counties and cities to raise revenue.

On April 11, 2000, the Committee on Transportation & Economic Development Appropriations adopted three amendments. The amendments delete: the interfund loan provision; technically incorrect language; and certain provisions regarding federal funds set-aside for farmworker housing.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |   |  |   |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. <u>Lower Taxes</u>             | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Less Government: The bill creates two new affordable housing programs, the Florida Front Porch Housing Initiative and the State Farmworker Housing Pilot Loan Program. The Florida Housing Finance Corporation is responsible for administering the programs. These programs will provide loans to public and private entities to finance affordable housing developments.

B. PRESENT SITUATION:

**Background**

The Florida Legislature has established in s. 420.0003(2), F.S., the goal that by the year 2010, "this state shall ensure that decent and affordable housing is available for all its residents." Affordable housing is statutorily defined to mean that monthly rents or mortgage payments do not exceed 30 percent of a very low-income, low-income, or moderate income household's income. Section 420.0003, F.S., contains the state housing strategy to achieve this goal.

In addition to a variety of federally and locally funded affordable housing programs, the Florida Legislature has created and funded several programs designed to achieve the state's affordable housing goal. In 1992, the Legislature dramatically increased its commitment to the provision of affordable housing with passage of the William E. Sadowski Act (chapter 92-317, L.O.F.), which earmarked a portion of the state's documentary stamp taxes for affordable housing. These funds are appropriated to fund a variety of state and local affordable housing programs.

**Florida Housing Finance Corporation**

The Florida Housing Finance Corporation administers most of the state's affordable housing programs and oversees the State Housing Initiatives Partnership Program (SHIP) through which local governments receive documentary stamp tax revenues. Programs administered through the Corporation include:

- State Apartment Incentive Loan (SAIL) Program;
- State Housing Initiatives Partnership (SHIP) Program;
- Low Income Rental Housing Tax Credit (LIHTC) Program;
- HOME Investment Partnerships (federally funded);
- Predevelopment Loan Program (PLP);

- Multifamily Mortgage Revenue Bond Program;
- Florida Home Ownership Assistance Program (HAP);
- Single Family Mortgage Revenue Bond Program.

### **Affordable Housing Study Commission**

The Affordable Housing Study Commission (Commission), is a statutory body (s. 420.609, F.S.) whose duties include analyzing solutions and programs to address the state's acute need for housing for people with very low to moderate income, and making policy and funding recommendations to the Governor and the Legislature. The members of the Commission are appointed by the Governor. By July 15 of each year, the Commission is required to prepare and submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report detailing its findings and making specific program, legislative, and funding recommendations and any other recommendations it deems appropriate. The Commission also is to recommend studies to be included in the annual research agenda of the Multidisciplinary Center for affordable housing. Such recommendations are to be submitted to the Department of Community Affairs and the center to assist them in establishing an appropriate research agenda for the center.

### **Florida Affordable Housing Guarantee Program (Guarantee Program)**

The Guarantee Program was established by the 1992 Legislature as part of the Sadowski Act (Chapter 92-317, Laws of Florida). The program was created to fill the void of mortgage insurers for single-family and multifamily affordable housing projects and to stimulate secondary market activity for affordable housing transactions. The program may provide guarantees on both taxable and tax-exempt bond issues, and may be used with other Corporation programs.

Section 420.5092, F.S., creates the Guarantee Program. This program establishes a Guarantee Fund intended to guarantee the payment of principal and interest on loans made to finance or refinance the purchase, construction, or rehabilitation of eligible housing. Eligible housing may include single family or multifamily housing. The section provides for a Guarantee Fund to be established with proceeds of revenue bonds issued by the Corporation. The Corporation is authorized to issue a maximum \$200 million in such revenue bonds. The Guarantee Fund was originally funded through the issuance of \$75 million in taxable revenue bonds in 1992, and subsequently expanded by means of an additional \$75 million in taxable revenue bonds issued in 1999. Such bonds are secured by a pledge of premium income from guarantees and interest earnings on the fund, with secondary security comprised of a debt service reserve fund in the amount of one year's debt service on the bonds. Any draw on the reserve fund is required to be replenished by a first priority claim on documentary stamp tax revenues received by the Corporation. The Corporation is permitted by the rating agencies to leverage the fund on a 5 to 1 basis. The Corporation estimates current capacity of the fund at less than two years.

### **Predevelopment Loan Program**

Section 420.526, F.S., creates the Predevelopment Loan Program to authorize the Corporation to underwrite and make loans and grants for site acquisition and development of land on which housing will be constructed for rental or sale to very-low- and low-income residents. The fees of consultants, architects, engineers and surveyors, and other expenses incurred to develop land may also be reimbursed under this program. Local governments, housing authorities, nonprofit organizations, and other eligible sponsors are eligible to apply for loans and grants up to \$500,000

## **State Housing Initiatives Partnership Act**

Part VII of chapter 420, F.S., (ss. 420.9072 -420.9079, F.S.), create and govern the State Housing Initiatives Partnership (SHIP) program, which channels a portion of documentary stamp tax revenues created by the Sadowski Act to counties and entitlement cities in Florida. The program is intended to allow local governments to use SHIP funds to develop housing programs 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 also may be used to provide the required match for federal HOME Investment Partnership Program funds and other state and federal funds. The Corporation uses independent contractors to provide technical assistance for counties and cities participating in SHIP.

Section 420.9071, F.S., provides definitions for terms used in the SHIP statutory sections. Subsection (4) defines "annual gross income" to mean:

"annual income as defined under the Section 8 housing assistance payments programs in 24 C.F.R. part 5; annual income as reported under the census long form for the recent available decennial census; or adjusted gross income as defined for purposes of reporting under Internal Revenue Service Form 1040 for individual federal annual income tax purposes. Counties and eligible municipalities shall calculate income by projecting the prevailing annual rate of income for all adults in the household as the amount of income to be received in a household during the 12 months following the effective date of the determination."

Subsection (27) defines "sales price" or "value" to mean:

"in the case of acquisition of an existing or newly constructed unit, the amount on the executed sales contract. For eligible persons who are building a unit on land that they own, the sales price is determined by an appraisal performed by a state-certified appraiser. The appraisal must include the value of the land and the improvements using the after-construction value of the property and must be dated within 12 months of the date construction is to commence. The sales price of any unit must include the value of the land in order to qualify as eligible housing as defined in subsection (8). In the case of rehabilitation or emergency repair of an existing unit, sales price or value means the value of the real property, as determined by an appraisal performed by a state-certified appraiser and dated within 12 months of the date construction is to commence or the assessed value of the real property as determined by the county property appraiser, plus the cost of the improvements."

Section 420.9075, F.S., governs local housing assistance plans and local partnerships. The section requires the staff or entity that has administrative authority for implementing a local housing assistance plan assisting rental developments shall annually monitor and determine tenant eligibility. This requirement is sometimes duplicative of monitoring activities conducted by another governmental entity as required by state or federal affordable housing programs. The section also provides that the sales price or value of new or existing eligible housing may not exceed 90 percent of the median area purchase price in the area where the eligible housing is located, as established by the United States Department of Treasury.

## Low-Income Housing Property Tax Exemption

### The Charitable Property Tax Exemption

Section 3(a), Art. VII of the State Constitution allows the Legislature to exempt from property taxation ". . . such portions of property as are used predominantly for educational, literary, scientific or charitable purposes."

Pursuant to chapter 196, F.S., property must meet the following criteria to qualify for a charitable property tax exemption:

The property must be owned and used by the exempt entity for charitable purposes (s. 196.192(2), F.S.) "Charitable purpose" is defined in s. 196.012(7), F.S., as

"....a function or service which is of such a community service that its discontinuance could legally result in the allocation of public funds for the continuance of the function or service. It is not necessary that public funds be allocated for such function or service but only that any such allocation would be legal."

Subsection 196.195(5), F.S., specifies, in part, that no charitable exemption be granted "until the applicant has been found . . . to be nonprofit as defined by this section." While the entire section lists criteria to be considered when determining the nonprofit status of applicants, subsection (4) states, in part, the following:

(4) Notwithstanding the provisions of subsections (2) and (3), a corporation organized as nonprofit under chapter 617 which has a valid consumer certificate of exemption pursuant to s. 212.08(7)(o) and which has valid exemption from federal income tax under s. 501(c)(3) of the internal Revenue Code is nonprofit.

The property must be exclusively or predominantly used for a charitable purpose (s. 196.192(2), F.S.). Predominant use of property is defined as "use of property for exempt purposes in excess of 50 percent" but less than exclusive, which is 100 percent (s. 196.012(2) and (3), F.S.). The courts have clarified that unless the entire property is used at least predominantly for an exempt use, no portion of it qualifies for an exemption. *North Shore Medical Center, Inc. v. Bystron* 461 So.2d 167 (Fla. 3rd DCA 1984) After the property meets the predominant use test, the exemption is available only to those portions of property used for charitable purposes.

The property cannot be "used for profit making purposes." (s. 196.196(3), F.S.) This requirement is reinforced in s. 196.192, F.S., which stipulates that "each use to which the property is being put must be considered in granting an exemption from ad valorem taxation, including any economic use in addition to any physical use."

Because exemptions from taxation results in an uneven distribution of the tax burden, statutes granting such tax relief are strictly construed against the exemption. *Miami Battlecreek v. Lummus* 192 So. 211 (Fla. 1939) and *Sebring Airport Authority v. McIntyre*, 642 So.2d 1072 (Fla. 1994)

### Recent Court Decisions Affecting the Charitable Tax Exemption

In the area of affordable housing, recent court decisions further guide property appraisers in determining properties qualified for the charitable tax exemption. The Fifth DCA upheld

a lower court's decision granting a charitable tax exemption to Public Housing Assistance, Inc., reasoning that the discontinuance of such services "could legally result in the allocation of public funds to provide" low-income housing for indigent farm workers. Thus, the court found that these services fell within the statutory definition of charitable purpose. *Public Housing Assistance, Inc. v Havill*, 571 So.2d 45 (Fla. 5th DCA 1990).

On the other hand, an Appellate Court upheld the denial by the Lake County Property Appraiser of a charitable property tax exemption for the Southlake Community Foundation Inc., a nonprofit owned affordable housing component of the Aurora development in Lake County. *Southlake Community Foundation, Inc. v Havill*, 707 So.2d 361 (Fla. 5th DCA 1998). The court found that the "practical dominion" exercised by Aurora over Southlake, with the attendant economic benefits, "overwhelm any use of the property" by Southlake. The court reasoned that "the predominant use of Aurora was economic, not charitable," therefore rendering Southlake ineligible for the exemption. The court concluded:

"(T)he actions of the Foundation simply do not fall within the definition of 'charitable purpose' found in section 196.012(7). There would have to be some evidence that public funds would need to be allocated in the absence of the Foundations's low income housing efforts."

Interested parties contend that this ruling financially undermined nonprofit properties which provide housing to low or very low income residents.

#### 1999 Property Tax Exemption for Affordable Housing

In response to the court's decision in *Southlake Community Foundation, Inc. v Havill*, the 1999 Legislature enacted chapter 99-378, L.O.F, creating s. 196.1978, F.S., to provide an exemption from ad valorem taxation for property that is used to provide affordable housing pursuant to any state housing program authorized under chapter 420, F.S., to low income or very low income persons as defined by s. 420.0004, F.S., that is owned entirely by a nonprofit corporation that meets the definition of a charitable organization under s. 501(c)(3) of the Internal Revenue Code of 1986, as amended, and that complies with the Internal Revenue Procedure 96-32, 1996-1 C.B. 717. The section provides that all property exempted must comply with the criteria for determination of exempt status to be applied by property appraisers on an annual basis in s. 196.195, F.S.

#### 501(c)(3) Corporations

Section 501(c)(3) of the Internal Revenue Code [26 USC Sec. 501] provides, in part, that the following organizations are exempt from federal taxes:

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes . . . no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

#### Internal Revenue Procedure 96-32

Internal Revenue Procedure 96-32 provides guidelines for establishing "charitable" status for organizations that provide low-income housing. First, it sets a "safe harbor" under which such organizations will be deemed charitable because they relieve the poor and distressed. This threshold appears to be a relatively high standard for the provision of affordable housing to the poor. If the "safe harbor" threshold is missed, organizations may qualify as charitable if they meet other specified criteria. In addition, "housing organizations may rely on other charitable purposes to qualify for recognition of exemption from income tax as Code Sec. 501(c)(3) organizations." Such exempt purposes include, but are not limited to:

Combating community deterioration;  
Lessening the burdens of government;  
Elimination of discrimination and prejudice;  
Lessening neighborhood tensions; and  
Relief of the distress of the elderly or physically handicapped.

It appears that a variety of non-profit groups providing a variety of services could comply with Internal Revenue Procedure 96-32 and maintain "charitable" status as an organization that provides low-income housing. However, Internal Revenue Procedure 96-32 stipulates the following:

If an organization furthers a charitable purpose . . . it nevertheless may fail to qualify for exemption because private interests of individuals with a financial stake in the project are furthered. For example, the role of a private developer or management company in the organization's activities must be carefully scrutinized to ensure the absence of inurement or impermissible private benefit resulting from real property sales, development fees, or management contracts.

#### Definition of Moderate, Low, and Very-Low Income Persons

Part 1 of chapter 420, F.S., is the State Housing Strategy Act. Section 420.004(9), F.S., defines low-income persons as:

one or more natural persons or a family, the total annual adjusted gross household income of which does not exceed 80 percent of the median annual adjusted gross income for households within the state, or 80 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

Section 420.004(10), F.S., defines moderate-income persons as:

one or more natural persons of a family, the total annual adjusted gross household income of which is less than 120 percent of the median annual adjusted gross income for households within the state, or 120 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

Section 420.004(14), F.S., defines very-low-income persons as:

one or more natural persons or a family, not including students, the total annual adjusted gross household income of which does not exceed 50 percent of the median annual adjusted gross income for households within the state, or 50 percent of the

median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

For purposes of affordable housing provided through local housing finance authorities, s. 159.603(7), F.S., defines "eligible persons" to mean

one or more natural persons or a family, irrespective of race, creed, national origin, or sex, determined by the housing finance authority to be of low, moderate, or middle income. Such determination does not preclude any person or family earning up to 150 percent of the state or county median family income from participating in programs. Persons 65 years of age or older shall be defined as eligible persons regardless of their incomes. In determining the income standards of eligible persons for its various programs, the housing finance authority may consider the following factors:

- (a) Requirements mandated by federal law.
- (b) Variations in circumstances in different areas of the state.
- (c) Whether the determination is for rental housing or homeownership purposes.
- (d) The need for family-size adjustments to accomplish the purposes set forth in this act.

### **State Housing Tax Credit Program**

Chapter 99-378, L.O.F., created s. 220.185, to authorize the State Housing Tax Credit for housing and mixed-use projects in urban areas needing revitalizing. The act established Legislative findings that: (1) urban areas in the state are experiencing conditions of blight, (2) deterioration of housing and industrial, commercial, and public facilities contribute to the decline of neighborhoods, and (3) additional resources are necessary to significantly improve revitalization efforts by local governments and community development organizations. The act established public policy and purpose for a state housing tax credit; defined critical terms such as "credit period," "eligible and adjusted basis," and "designated and qualified projects"; and authorized the Corporation to grant state housing tax credits under certain guidelines and limitations. The act provided that the total allocation for the tax credit is \$2.5 million.

Section 420.5093, F.S., which was also created by chapter 99-378, L.O.F., establishes the State Housing Tax Credit Program to increase affordable housing in urban areas. The section requires the Florida Housing Finance Corporation to determine which projects qualify for the tax credits pursuant to s. 220.185, F.S., and prepare an annual report, to be approved by the Governor, containing general guidelines for tax credit allocation and distribution to certain projects. The Corporation is required to adopt allocation procedures to ensure the maximum use of available tax credits to encourage development of low-income housing and associated mixed-use projects in urban areas. Taxpayers wanting to participate in the State Housing Tax Credit Program must submit an application for tax credit to the Corporation.

The State Housing Tax Credit program has not been implemented. An analysis by the Corporation staff revealed that for every dollar the state would put into the program, it would receive only a fraction back in the form of affordable housing.



## **Farmworker Housing**

In its "1998 Final Report," the Affordable Housing Study Commission (Commission) concluded three years of work devoted to developing a proposed Comprehensive Affordable Housing Policy for Florida. Despite having housing programs and a delivery system considered the best in the nation by many, the Commission concluded that only a small part of the overall need for affordable housing is being met.

The Commission recommended to the Governor and the Legislature that a complete policy be adopted to replace the current State Housing Strategy in s. 420.0003, F.S. In brief, the strategy proposed by the Commission addresses the following areas: community revitalization, affordable housing providers, housing for households at 1 - 30 percent of area median income, housing for special needs households, preservation of existing affordable housing, obstacles to affordable housing, economic integration, and funding principles.

As noted, one issue the Commission focused on was housing for special needs households, including migrant and seasonal farmworkers. The report found that Florida has long had a shortage of affordable housing to accommodate its growing migrant and seasonal farmworker populations. The Commission found that many of the housing units currently available to farmworkers are substandard and lack easy access to essential services such as medical and shopping facilities and public transportation. In addition, the report noted migrant farmworkers are widely reported to be the victims of exploitive practices by landlords. While local housing authorities can provide housing for low-income farmworkers, the Commission found that most do not. Similarly, while several state housing programs provide targeted funding for the development of farmworker housing, they either have not been used or in many cases have not been very successful in creating housing for this population.

The Department of Community Affairs, through a contract with the Shimberg Center at the University of Florida, has developed a methodology for quantifying the need for additional migrant housing by county. A comparison of housing demand with permitted migrant housing and other housing reserved for farm labor shows an unmet need for housing for an additional 82,302 persons. This estimate does not include the need for seasonal workers and their families since these were defined as year-round residents and were included in other needs assessments. Nearly 80 percent of the shortfall is concentrated in just six counties: Palm Beach, Hendry, Highlands, St. Lucie, Martin, and DeSoto.

In their proposal, "Florida Farmworker Housing Initiative," Governor Bush and Lieutenant Governor Brogan report that previous statewide studies have estimated Florida's total farmworker populations to range from 171,000 to 435,000, with 60-80 percent of those totals thought to be migrant or seasonal. The proposal, which requested \$30 million in federal disaster funds to initiate a statewide network of affordable housing for migrant and seasonal farmworkers, declared that the unmet need for decent and affordable housing for migrant and seasonal farmworkers has met crisis proportions in Florida.

Advocates for farmworker housing and others familiar with the issue tend to agree that the key to providing affordable housing for Florida's farmworkers is to coordinate state efforts with the federal programs that provide funds to construct farmworker housing, and with other state affordable housing programs. Two specific federal programs are designed specifically to fund farmworker housing initiatives. These are the Section 514 and 516 programs that are administered by the Rural Housing Services (RHS) of the United States Department of Agriculture. Section 516 provides grants that may be used to cover up to 90

percent of the development cost of a project. Section 514 provides loans that are generally for a 33-year term at 1 percent interest and may be used to cover the full cost of a project. Currently, there are 25 Section 514/516 housing projects with a total of 3,739 units in 16 Florida Counties. Recently, the RHS has instituted a much more competitive application process that emphasizes the presence and extent of leveraged assistance, including donated land, funds for hard construction cost, tenant subsidies, and state and federal funds. To remain competitive, advocates believe Florida will need to commit state funds specifically to farmworker housing.

### **Zoning and Permitting of Affordable Housing**

In its 1997 Final Report, the Florida Affordable Housing Commission examined the problems the "NIMBY" or Not-In-My-Back-Yard" syndrome created for the development of affordable housing. The report discussed the causes of NIMBYism, particularly perceived effects on property values. The Commission analysis revealed that ten out of twelve known studies determined that property values are not affected by various housing facilities. As regards the problems created for affordable housing development, the report concluded that NIMBYism presents a major barrier to the placement of affordable housing in communities where it is needed most -- close to employment opportunities and services. In short, the report found that NIMBYism is an impediment to fair housing. The report found that local governments have mixed responses to NIMBYism. Some officials make decisions to support affordable housing in the face of public opposition, while others react to opposition by denying or being slow to support such development.

To address the problem of NIMBYism, the Commission considered several options. The Commission recommended an amendment to Florida's Fair Housing Act as the least onerous option. The option proposed amending the Fair Housing Act to prohibit discrimination in land use decisions and permitting of development based on race, color, national origin, sex, handicap, familial status, source of income, religion, or based on source of financing of a development or proposed development. The Commission also recommended amending the Fair Housing Act to prohibit discrimination in housing based on source of income.

Chapter 760, F.S., relates to discrimination in the treatment of persons, and with minority representation. Part II of chapter 760, F.S., contains the provisions of the Florida Fair Housing Act (Act). The Act establishes the state's policy on fair housing; defines various terms; and prohibits discrimination based on race, color, national origin, sex, handicap, familial status, or religion in the sale or rental of housing, the provision of brokerage services, and the financing of housing or residential real estate transactions. The act does not address discrimination in land use decisions or permitting of development.

### **Private Activity Bonds**

Amendments to the Internal Revenue Code of 1954 authorized state and local governmental units to finance housing through the issuance of tax exempt bonds. The Internal Revenue Code of 1986 placed several restrictions on the use of tax-exempt bond financing for community development projects, including affordable housing projects. The Internal Revenue Code allows each state to issue tax exempt private activity bonds. However, the volume allotted each state is limited. The federally-imposed statewide volume limitation on private activity bonds includes bonds issued for manufacturing facilities, single-family housing, multi-family housing, pollution control facilities, solid waste disposal facilities, water and sewer facilities, distribution facilities, and redevelopment

projects. As a result, tax-exempt bonds issued by local housing finance authorities, other than certain refunding bonds, are limited by the state's private activity bond allocation cap.

Section 146 of the Internal Revenue Code of 1986 provides for the state volume limit on tax-exempt private activity bonds and provides for the allocation of the statewide volume cap to state agencies and non-state agencies. The section allows states to adopt their own formula for allocating the state ceiling among governmental units having the authority to issue tax-exempt private activity bonds. The Florida Legislature elected to adopt its own allocation formula. Part VI of chapter 159, F.S., provides for the allocation of the state volume limitation imposed on private activity bonds through the use of allocation pools. The Division of Bond Finance of the State Board of Administration is responsible for the allocation of the federally imposed ceiling on private activity bonds issued within the state.

Prior to legislation creating the Florida First Business allocation pool, the state's private activity bond allocation was as follows:

- The first \$75 million to the manufacturing facility bond pool;
- 60 percent of the remaining volume among regional pools based on population in each region;
- 25 percent of the remaining volume to the Florida Housing Finance Corporation; and
- 15 percent of the remaining volume to the state allocation pool to be used for priority projects.

Chapter 95-416, L.O.F., created s. 159.8083, F.S., to establish the Florida First Business allocation pool and revised the state's private activity bond allocation. The Florida First Business allocation pool was created for use in providing allocations to businesses that are commencing projects which will lead to job creation or the retention of jobs in Florida. Businesses must be certified by the Office of Tourism, Trade, and Economic Development Enterprise Florida to be eligible to use this allocation pool. Section 159.804, F.S., was amended to revise the state's private activity bond volume limitation as follows:

- The first \$75 million (plus additional amounts based on the previous years' performance) allocated to the manufacturing facility bond pool;
- 50 percent to the regional allocation bond pool;
- 5 percent to the state priority allocation pool;
- 25 percent to the Florida Housing Finance Corporation; and,
- 20 percent to the Florida First Business allocation pool.

Section 159.809, F.S., relating to the recapture of unused allocations in private activity bond allocation pools, was amended to provide that on April 1 of each year, any unused portions remaining in the state allocation pool shall be added to the Florida First Business allocation pool, and to provide that on July 1 of each year, any unused portions remaining in the regional allocation pool or Florida Housing Finance allocation pool shall be added to the Florida First Business allocation pool. The section provides that on November 16 of each calendar year, any unused portions remaining in the Florida First Business allocation pool from January 1 through November 16 shall be added to the state allocation pool.

Section 159.805, F.S., provides procedures for obtaining allocations. Subsection (2) provides that any written confirmation issued by the director pursuant to subsection (1) ceases to be effective unless the bonds to which that confirmation applies have been issued by the agency and written notice of such issuance has been provided to the director within 90 calendar days after the date the confirmation was issued or December 29, whichever occurs first. Subsection (3) provides that upon the expiration of the confirmation or at any time the agency decides the allocation is no longer necessary, but, in any event, not later than the 95th calendar day after the date the confirmation was issued, the agency shall notify the Division, by overnight common carrier delivery service, of its failure to issue any bonds pursuant to the written confirmation. Such notice of failure to issue shall be filed with the division and the allocation provided in the expired confirmation shall be made available for reallocation pursuant to this part.

Section 159.807, F.S., governs the state allocation pool, and provides that at all times the state allocation pool shall be available to provide allocations for those portions of a bond requiring an allocation under s. 146(m) of the Code. The section provides that prior to April 1 of each year, the state allocation pool shall be available solely to provide written confirmations for private activity bonds to finance priority projects except manufacturing facilities. Priority projects are defined to mean: a solid waste disposal facility or a sewage facility, as such terms are defined in s. 142 of the Code, or any project which is to be located in an area which is an enterprise zone designated pursuant to s. 290.0065, F.S.

Section 159.8083, F.S., provides for allocations from Florida's First Business allocation pool to be awarded statewide pursuant to procedures specified in s. 159.805, F.S., with the exception of provisions requiring bonds to be issued within 90 days and a provision relating to excess demand in a pool. Florida First Business projects that are eligible for a carry forward do not lose their allocation on November 16 if they have applied and have been granted a carry forward. In issuing written confirmations of allocations for Florida First Business projects, the Division must use the Florida First Business allocation pool. If allocation is not available from the Florida First Business allocation pool, the Division must issue written confirmations of allocations for Florida First Business projects pursuant to s. 159.806 (regional allocation pools) or s. 159.807, (state allocation pool) F.S., in such order. For the purpose of determining priority within a regional allocation pool or the state allocation pool, notices of intent to issue bonds for Florida First Business projects to be issued from a regional allocation pool or the state allocation pool are to be considered to have been received by the Division at the time it is determined by the Division that the Florida First Business allocation pool is unavailable. If the total amount requested in notices of intent to issue private activity bonds for Florida First Business projects exceeds the total amount of the Florida First Business allocation pool, the director must forward all timely notices of intent to issue, which are received by the division for such projects, to the Office of Tourism, Trade, and Economic Development, which must render a decision as to which notices of intent to issue are to receive written confirmations.

As the demand for private activity bond allocation has increased, the competition has become more intense every year. Under current law (s. 159.81, F.S.) certain projects may utilize a procedure that allows an issuer to request an allocation and then, rather than be forced either to use it during the calendar year or have it revert to another pool, carry that allocation forward for up to three years prior to issuing the bonds. Once a carry-forward is granted, however, it must be utilized by the entity for which it was obtained, preventing the state from shifting an earlier carry forward that is about to lapse to a viable project.

In at least three instances since the creation of the Florida First Business Pool, allocations for Florida First Business projects expired because the financing never went forward. The allocation represented by these projects, \$93,132,657, was lost to the state.

**C. EFFECT OF PROPOSED CHANGES:**

**Florida Housing Finance Corporation**

The bill modifies the powers of the Florida Housing Finance Corporation to allow it to reserve funds to provide a remedy for an applicant who successfully appeals a competitive application. The bill also allows the Corporation to designate private activity allocation between single family and multifamily projects.

**Affordable Housing Study Commission**

The bill updates statutory provisions relating to the Florida Affordable Housing Study Commission, including the timing of the Commission's report to the Governor and the Legislature. The bill also expands the types of studies the Commission must recommend for affordable housing.

**Florida Affordable Housing Guarantee Program (Guarantee Program)**

The Florida Affordable Housing Guarantee Program is revised to increase the maximum amount of revenue bonds that may be issued by the Corporation from \$200 million to \$300 million.

**Predevelopment Loan Program**

The bill authorizes the Corporation to forgive and make a grant of portions of a loan a sponsor is unable to repay due to inability to obtain construction or permanent financing for the development. The Corporation is prohibited from forgiving a portion of a loan secured by a mortgage to the extent it could be repaid from the sale of the mortgaged property. Current language prohibiting the award of a grant or loan to a sponsor that is unable to demonstrate the ability to proceed as verified by a qualified development team is deleted. The current set-aside for farmworker housing is deleted, but the bill provides that sponsors of farmworker housing shall receive first priority under this program. The Corporation is authorized to establish further priorities by rule. The bill combines current eligible activities for loans and grants, and authorizes the Corporation to make loans at interest rates between 0 and 3 percent per year, rather than at 3 percent.

**State Housing Initiatives Partnership Act**

Under the SHIP Initiative, the bill authorizes local governments to rely on another government entity's compliance efforts and modifies existing purchase price limitations to permit an alternate determination from the Treasury Department's safe harbor amounts, based on actual statistical data. The bill also revises the definition of "annual gross income," to provide that counties and municipalities shall calculate income by annualizing verified sources, rather than projecting the prevailing annual rate, of income for a household as the amount of income to be received in the household during the 12 months following the effective date of the determination.

**Low-Income Housing Property Tax Exemption**

The bill revises the current low-income housing property exemption to ensure that housing provided through local housing finance authorities is covered under the exemption. Effective upon becoming a law and operating retroactively to January 1, 2000, the bill revises the current low-income housing property exemption. The section is amended to provide that property used to provide affordable housing serving eligible persons as defined by s. 159.603(7), F.S., and persons meeting income limits specified in s. 420.0004(9), (10), and (14), F.S., which property is owned by entities meeting current requirements, shall be exempt from ad valorem taxation. Legislative intent is added stating that any property owned by a limited liability company which is disregarded as an entity for federal income tax purposes pursuant to Treasury Regulation 301.77-1-3(b)(1)(ii) shall be treated as owned by its sole member.

### **State Housing Tax Credit Program/Front Porch Florida Housing Initiative**

The bill repeals the State Housing Tax Credit Program and replaces it with the Front Porch Florida Housing Initiative to provide low-interest and deferred interest loans to provide qualified urban housing developments in Florida's front porch communities. (See section 12 of the "Section by Section Analysis" for a detailed description of this program.)

### **Farmworker Housing**

The bill creates the State Farmworker Housing Pilot Loan Program to demonstrate the ability to use state dedicated funds to leverage Federal Government, local government, and private resources to provide affordable, safe, and sanitary rental housing units for farmworkers. (See section 18 of the "Section by Section Analysis" for a detailed description of this program.)

### **Zoning and Permitting of Affordable Housing**

The bill addresses discrimination against affordable housing by amending the Fair Housing Act to prohibit discrimination in land use decisions and in permitting of development based on race, color, national origin, sex, disability, familial status, religion, or, except as otherwise provided by law, source of financing of a development or proposed development.

### **Private Activity Bonds**

The bill increases the percentage of the state private activity bond allocation going to the regional pools from 50 percent to 60 percent and decreases the percentage going to the Florida First Business allocation pool from 20 percent to 10 percent. The bill also provides that for those projects for which there are specially designated allocation pools, an issuer must apply to and exhaust the resources of those pools before applying to a regional allocation pool. The bill allows confirmation of private activity bond allocation to be made by other than overnight common carrier so long as the confirmation arrives no later than the following business day. The time within which an allocation must be used by an issuer that receives an allocation from a regional pool is increased from 90 days to 155 days. Finally, the bill provides that should the provisions of the Internal Revenue Code ever be amended to increase or decrease the amount of allocation available to Florida, the revised allocation must be distributed in the same respective percentages.

**D. SECTION-BY-SECTION ANALYSIS:**

**Section 1.** Paragraph (b) of subsection (1), paragraph (a) of subsection (2), and subsection (5) of s. 159.804, F.S., are amended to increase the percentage of the state private activity bond allocation going to the regional pools from 50 percent to 60 percent and to decrease the percentage going to the Florida First Business allocation pool from 20 percent to 10 percent. The section also provides that the 60 percent going to the regional pools may not be used to finance Florida First Business projects prior to June 1 or to issue bonds requiring an allocation under s. 146(m) of the Code.

**Section 2.** Subsections (2) and (3) and paragraph (a) of subsection (5) of s. 159.805, F.S., are amended to extend from 90 days to 155 days the time within which an issuer of bonds that obtains an allocation from a regional allocation pool must close the issue. The section also provides that confirmation of private activity bond allocation may be made by other than overnight common carrier so long as the confirmation arrives no later than the following business day.

**Section 3.** Subsection (1) of s. 159.806, F.S., relating to the regional allocation pools, is amended to change the date prior to which the state allocation pool must be used to finance priority projects from April 1 to June 1, to delete the exception from this requirement where the agency had requested an allocation for a priority project from the regional allocation pools, and to provide that prior to June 1, the Florida First Business allocation pool must be used to finance priority projects.

**Section 4.** Subsection (2) of s. 159.807, F.S., is amended to change the date from April 1 to June 1, prior to which, with the exception provided in subsection (1) relating to bonds requiring an allocation under s. 146(m) of the Code, the state allocation pool must be available solely to provide written confirmations for private activity bonds to finance priority projects except manufacturing facilities. The section also is amended to conform related dates under the state allocation pool procedure to the above changes.

**Section 5.** Section 159.8083, F.S., is amended to provide that when allocation is not available from the Florida First Business allocation pool, only after June 1 of each year may the Division issue written confirmations for Florida First Business projects from the regional and state allocations pools.

**Section 6.** Section 159.809, F.S., relating to the recapture of unused amounts, is amended to delete subsection (1) which provides that on April 1 of each year, any portion of each initial allocation made pursuant to s. 159.804(4), F.S., (state allocation pool), for which confirmation has not been issued or for which an issuance report has not been received, shall be added the Florida First Business allocation pool. As amended, the section provides for unused portions of the state allocation pool on and after July 1 to be added to the Florida First Business allocation pool. The section is further amended to conform dates with changes made in previous sections of the bill.

**Section 7.** Section 159.813, F.S., provides legislative intent that the percentages available for the various pools shall not be changed as a result of a change in the amount or permitted uses of private activity bond allocation.

**Section 8.** Section 196.1978, is amended effective upon becoming a law and operating retroactively to January 1, 2000, to revise the current low-income housing property exemption. The section is amended to provide that property used to provide affordable housing serving eligible persons as defined by s. 159.603(7), F.S., and persons meeting

income limits specified in s. 420.0004(9), (10), and (14), which property is owned by entities meeting current requirements, shall be exempt from ad valorem taxation. Legislative intent is added stating that any property owned by a limited liability company which is disregarded as an entity for federal income tax purposes pursuant to Treasury Regulation 301.77-1-3(b)(1)(ii) shall be treated as owned by its sole member.

**Section 9.** Subsection (37) is added to s. 420.507, F.S., to authorize the Florida Housing Finance Corporation (Corporation) to provide by rule, in connection with any corporation competitive program, for the reservation of future allocation or funding to provide a remedy for a litigant which is ultimately successful in its litigation regarding a competitive application, and to establish a date certain by which, if litigation is not resolved, the successful litigant will be funded from a subsequent year's available allocation or funding.

Subsection (38) is added to s. 420.507, F.S., to authorize the Corporation to designate private activity allocation for tax-exempt bonds received by the corporation between single-family and multifamily projects.

**Section 10.** Subsection (11) of s. 420.5092, is amended to increase from \$200 million to \$300 million the maximum total amount of revenue bonds the Corporation may issue under the Florida Affordable Housing Guarantee Program.

**Section 11.** Subsection (3) of s. 420.5099, F.S., relating to the allocation of the low-income housing tax credit, is amended to correct a rule reference.

**Section 12.** Section 420.518, F.S., is created to establish Florida's Front Porch Housing Initiative. Subsection (1) provides the section may be cited as the "Florida's Front Porch Initiative."

Subsection (2) provides legislative findings. Subsection (3) provides a declaration of state policy and provides the purpose of this section.

Subsection (4) defines "front porch community," "front porch loan," "land," "qualified urban housing development," and "urban housing development."

Subsection (5) authorizes the Corporation to make loans for qualified urban housing developments requires the Corporation to establish by rule a procedure and criteria for receiving, evaluating, and designating for funding qualified developments. The Corporation must also establish criteria for any commercial component of an urban housing development not eligible to be financed from a Front Porch loan. The Corporation must adopt allocation procedures for the program that meet stated criteria. Priority in allocation is to be established by rule of the Corporation.

Subsection (6) provides that Front Porch Loans shall mature at times established by the Corporation, but not to exceed 40 years. Loans may be interest-only or interest-deferred prior to construction and lease-up or sale of the development and may be payable as interest-only to the extent of available cash flow of the development.

Subsection (7) grants the Corporation the authority to establish all terms and conditions of loans.

Subsection (8) provides that if an applicant receives a loan for land acquisition and subsequently determines to use such land for purposes other than a qualified urban



housing development, the Corporation shall have the right to demand repayment of the loan or to consent to such other use of the land.

Subsection (9) provides eligible costs for use of loan proceeds. These include: land acquisition, site preparation, costs for appraisals, environmental reviews and feasibility studies, cost of acquisition and construction of infrastructure or relocation of infrastructure, costs of enhanced security features for urban developments, costs of construction and rehabilitation, and such other costs established by the Corporation.

Subsection (10) provides for moneys appropriated to fund the program to be deposited by the Corporation in an account with a qualified public depository meeting the requirements of chapter 280, F.S. All amounts received by the Corporation as budget allocation or appropriation for the program, including all amounts allocated pursuant to chapter 99-378, L.O.F., must be deposited into such account. All moneys received from any source for the purpose of the program and all proceeds derived from the use of such money, including any repayment of front porch loans, must be deposited in such account. All unencumbered funds, proceeds from the sale of any property, and any other proceeds that would otherwise accrue pursuant to the activities of the program must be transferred to such account. In addition, all loan repayments, proceeds from the sale of any property, and any other proceeds that would otherwise accrue pursuant to the activities conducted under the provisions of Florida's Front Porch Housing Initiative must be deposited in such account and shall not revert to the General Revenue Fund. Expenditures for the Florida Front Porch Housing Initiative shall not be required to be included in the Corporation's budget request or be subject to appropriation by the Legislature.

Subsection (11) grants the Corporation the authority to make an interfund loan from amounts deposited to the State Housing Trust Fund on behalf of the corporation pursuant to s. 201.15(7)(a), F.S., to the account established for the Florida Front Porch Housing Initiative for purposes of advance funding of front porch loans. Any such interfund loan may be repaid from moneys subsequently deposited into such account.

Subsection (12) provides that if at any time the Corporation determines that amounts on deposit in the account established under subsection (10) are unlikely to be able to be used for making front porch loans, the corporation may transfer amounts on deposit in such account to the State Apartment Incentive Loan Fund for use for the purposes of such fund.

**Section 13.** Section 420.526, F.S., is amended. Subsection (1) is amended to delete authority to underwrite loans under the Predevelopment Loan Program. Subsection (2) is amended to authorize the Corporation to forgive and make a grant of portions of a loan a sponsor is unable to repay due to inability to obtain construction or permanent financing for the development. The Corporation is prohibited from forgiving a portion of a loan secured by a mortgage to the extent it could be repaid from the sale of the mortgaged property. Current language prohibiting the award of a grant or loan to a sponsor that is unable to demonstrate the ability to proceed as verified by a qualified development team is deleted. Subsection (3) is amended to delete the current set-aside for farmworker housing and to provide that sponsors of farmworker housing shall receive first priority under this program. The Corporation is authorized to establish further priorities by rule. Subsection (4) is amended to combine current eligible activities for loans and grants. Subsection (7) is amended to authorize the Corporation to make loans at interest rates between 0 and 3 percent per year, rather than at 3 percent. Current language providing reasonable security for loans is deleted.

**Section 14.** Section 420.609, F.S., relating to the Affordable Housing Study Commission, is amended. Subsection (3) is amended to replace references to “agency” with “corporation.” Subsection (5) is amended to provide that the Commission shall submit its recommendations to the executive director of the Corporation, as well as the Secretary of the Department of Community Affairs. Subsection (7) is amended to change from December 31 to July 15 the date the Commission must submit its annual report to the Governor and the Legislature. Subsection (8) is amended to expand the types of studies the Commission must recommend for affordable housing.

**Section 15.** Section 420.9071, F.S., relating to the State Housing Initiative Partnership program, is amended. Subsection (4), which defines “annual gross income,” is amended to provide that counties and municipalities shall calculate income by annualizing verified sources, rather than projecting the prevailing annual rate, of income for a household as the amount of income to be received in the household during the 12 months following the effective date of the determination. Subsection (27) is amended to revise the definition of “sales price” or “value.”

**Section 16.** Section 420.9075, F.S., relating to local housing assistance plans, is amended. Subsection (3) is amended to authorize local governments to rely on another governmental entity’s compliance efforts with respect to the SHIP program. Subsection (4) is amended to modify the existing purchase price limits under the SHIP program to permit an alternate determination from the Treasury Department’s safe harbor amounts, based on actual statistical data.

**Section 17.** Section 760.26, F.S., is created to prohibit discrimination in land use decisions and in permitting of development based on race, color, national origin, sex, disability, familial status, religion, or, except as otherwise provided by law, source of financing of a development or proposed development.

**Section 18.** The State Farmworker Housing Pilot Loan Program is created to demonstrate the ability to use state dedicated funds to leverage Federal Government, local government, and private resources to provide affordable, safe, and sanitary rental housing units for farmworkers.

Subsection (1) authorizes the Corporation, subject to the availability of funds, to make farmworker housing loans to sponsors, provided the sponsor agrees to meet specified conditions governing set-asides for farmworkers, income limitations, and maximum rents, or uses federal funds provided under sections 514 or 516 of Title V of the Federal Housing Act of 1949 and meets maximum rental limits, tenant eligibility, and other regulatory requirements established pursuant to such programs.

Subsection (2) requires that the Corporation issue a request for proposals to solicit applications for loans offered under this section. The Corporation must establish a funding cycle to distribute funds pursuant to this section, and must coordinate this cycle with the 2001 federal funding cycle for sections 514 or 516 of Title V of the Federal Housing Act of 1949. The Corporation is authorized to distribute through this funding cycle any additional funds set aside for farmworker housing.

Subsection (3) requires eligible applications to: demonstrate the sponsor possesses title to or firm site control of land, and evidences availability of required infrastructure; have grants, donations of land or contributions from other sources collectively totaling at least 25 percent of the total development cost; have local government contributions and private agriculture producer and other private leveraged funds totaling no less than 3 percent total

development cost; demonstrate accessibility to commercial businesses and services needed to serve the needs of the resident farmworkers, or include a viable plan to provide access to those commercial businesses and services; and limit developer fees to no more than 15 percent of total development cost, less developer fees and land costs..

Subsection (4) directs the corporation to establish a review committee and establish a scoring system for evaluation and competitive ranking of applications. The subsection provides that applications must address and be evaluated and ranked based on the following specified criteria. The subsection authorizes the Corporation to reject any and all applications, and provides for the review committee to make recommendations to the Board of Directors of the Corporation regarding program participation. The Corporation board is to make the final ranking and the decisions regarding which applicants shall become program participants based on the scores received in the competitive ranking, further review of applications, and the recommendations of the review committee. The Corporation board will approve or reject applications for loans and must determine the tentative loan amount available to each applicant selected for participation in the program.

Subsection (5) provides that loans provided pursuant to this section are to be non-amortizing. The Corporation is directed to establish interest rates for loans. Loans to not-for-profit applicants must have interest rates of zero percent if no Low-income Housing Tax Credits are allocated to the development. If Low-income Housing tax credits are allocated to the development, the interest rate may be adjusted upward to meet appropriate federal requirements. Loans to for profit applicants must have interest rates of three percent if no Low-income Housing Tax Credits are allocated to the development. If Low-income Housing Tax Credits are allocated to the development, the interest rate may be adjusted upward to meet appropriate federal requirements. Loans may not exceed \$5 million. The subsection provides that no loan combined with any other mortgage in a superior position may exceed the development cost or the value of security, whichever is less. The loan term must be for a period of not less than 20 years. The Corporation may renegotiate and extend the loan in order to extend the availability of housing for farmworkers. The term of a loan may not extend beyond the period for which the sponsor agrees to provide housing for farmworkers. Payment on the loans must be based on the actual development cash flow, and principal and interest may be deferred without constituting a default on the loan. The Corporation may defer repayment of loans made under this section until the end of the loan period, including any extension, or until the housing no longer meets the requirements of section 1, whichever occurs first. The proceeds of all loans shall be used for new construction or substantial rehabilitation which creates affordable, safe, and sanitary housing units. The section requires sponsors to annually certify the eligibility status and adjusted gross income of all persons or families qualified under subsection (1), who are residing in a project funded by this program. For monitoring purposes, the corporation may rely on a federal governmental entity which is also required to monitor and determine tenant eligibility.

Paragraph (f) of subsection (5) provides that should agricultural and market conditions change substantially in a market area in which a project is located, the sponsor may request approval from the Corporation for changes in the occupational or income set-aside requirements. The sponsor must submit evidence of such market changes, including but not limited to, a market study and statements from agricultural producers and agricultural labor representatives. The board of directors of the Corporation may amend set-aside requirements; however, such changes must preserve the maximum percentage of units for eligible farmworkers as market conditions permit.

Subsection (6) provides procedures and powers of the Corporation if a default on a loan occurs.

Subsection (7) directs the Corporation, subject to the availability of funding, to contract with the Florida Farmworker Housing Corporation to assist the Corporation in establishing and implementing the program, and to prepare a research report that includes a needs assessment and strategic plan for Florida's Agricultural labor housing. The research report must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

**Section 19.** Subsection (10) of s. 220.02, F.S., is amended to delete a reference to the state housing tax credit.

**Section 20.** Paragraph (a) of subsection (1) of s. 220.13, F.S., is amended to delete a reference to the state housing tax credit.

**Section 21.** Sections 220.185 and 420.5093, F.S., relating to the State Housing Tax Credit Program, are repealed.

**Section 22.** An effective date of July 1, 2000, is provided, except as otherwise provided.

### III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

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

##### 1. Revenues:

This bill repeals the State Housing Tax Credit program, which was intended to provide credits against corporation income tax liabilities. However, this program has not been implemented.

##### 2. Expenditures:

Subsection (10) of section 12 of the bill, relating to Florida's Front Porch Housing Initiative, provides that all amounts received by the Corporation as budget allocation or appropriation for the program, including all amounts allocated pursuant to chapter 99-378, L.O.F., must be deposited into such account. However, the bill does not explicitly appropriate such funds to the new program. As discussed in the "Present Situation" section of the analysis, chapter 99-378, L.O.F., provided that the total allocation for the tax credit is \$2.5 million. In addition, the 1999 General Appropriations Act appropriated \$400,000 for the tax credit program. Currently, \$2.9 million is allocated for the tax credit program. Without this bill, these funds will revert to the General Revenue Fund effective July 1, 2000. [Note: Chapter 99-378, L.O.F., also contained an additional \$2.5 million appropriation for the Urban Infill and Redevelopment Grant Program and the General Appropriation Act contained an additional \$300,000 for Front Porch Florida for the Urban Homesteading Program. An amendment may be necessary to clarify that only funds allocated or appropriated for the "Housing Tax Credit" program shall be deposited into the account for the Florida Front Porch Housing Initiative.

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

1. Revenues:

The changes to the affordable housing ad valorem tax exemption included in section 8 of the bill expand the exemption to additional properties and decrease ad valorem revenues by an indeterminate amount. The Revenue Estimating Conference has not yet reviewed this bill.

The Florida Front Porch Housing Initiative and the State Farmworker Housing Pilot Loan Program will provide loans to eligible applicants, including local governments, to develop affordable housing developments.

2. Expenditures:

This bill has no direct fiscal impact on local government expenditures.

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

This bill creates two new affordable housing programs, the Florida Front Porch Housing Initiative and the State Farmworker Housing Pilot Loan Program. These programs may assist and encourage private developers with their affordable housing developments. The bill also amends several existing affordable housing programs. New affordable housing resulting from these programs will benefit eligible households in finding affordable housing. To the extent these changes increase the effectiveness of such programs, developers and future residents will benefit.

Changes to the state's private activity bond allocation distribution will effect the availability of tax-exempt bonding authority for various eligible uses. In brief, the bill increases the availability of allocation for those purposes allowed under the regional allocation pools -- including affordable housing -- and decreases the availability of allocation for the Florida First Business allocation pool.

**D. FISCAL COMMENTS:**

The Revenue Estimating Conference has not yet considered this bill.

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

**A. APPLICABILITY OF THE MANDATES PROVISION:**

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

**B. REDUCTION OF REVENUE RAISING AUTHORITY:**

The expansion of the ad valorem property tax exemption for affordable housing properties will reduce the authority of municipalities and counties to raise revenues. Whether the reduction is significant has not been determined.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

In section 12 of the bill, on page 15, lines 25-27, "Front Porch Community" is defined to mean "a community designated as a Front Porch community by the Executive Office of the Governor." The bill provides no guidance to Executive Office of the Governor regarding such designations. Current law also does not provide guidance on which communities may be designated as Front Porch communities.

This provision may constitute an unlawful delegation of authority to the executive branch. Article III, section 1, of the Florida Constitution provides, in part: "The legislative power of the state shall be vested in a legislature of the state of Florida . . ." Article II, Section 2, provides:

"The powers of state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

B. RULE-MAKING AUTHORITY:

This bill grants additional rule making authority to the Florida Housing Finance Corporation.

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 11, 2000, the Committee on Transportation & Economic Development Appropriations adopted three amendments and reported the bill favorably. The amendments:

- delete language allowing the Corporation to make interfund loans for the Florida Front Porch Housing Initiative;
- delete technically incorrect language providing for previously appropriated funds to be deposited in a Florida Front Porch Housing Initiative account; and
- remove language that allows the Corporation to distribute federal funds set-aside for farmworker housing through a different funding cycle. As amended, the bill allows the Corporation to distribute only state funds set aside for farmworker housing through a separate cycle.

**STORAGE NAME:** hb2261a.ted

**DATE:** April 11, 2000

**PAGE 23**

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Thomas L. Hamby

Staff Director:

Joan Highsmith-Smith

AS REVISED BY THE COMMITTEE ON TRANSPORTATION & ECONOMIC  
DEVELOPMENT APPROPRIATIONS:

Prepared by:

Kurt Hamon

Staff Director:

Eliza Hawkins