

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 294

SPONSOR: Judiciary Committee, Comprehensive Planning, Local and Military Affairs Committee
and Senators Sanderson and Geller

SUBJECT: Housing

DATE: April 18, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bowman	Yeatman	CA	Favorable/CS
2.	Matthews	Johnson	JU	Favorable/CS
3.	_____	_____	FT	_____
4.	_____	_____	AGG	_____
5.	_____	_____	AP	_____
6.	_____	_____	_____	_____

I. Summary:

This Committee Substitute for Committee Substitute for Senate bill 294 (CS/CS) amends provisions of the Florida Housing Finance Corporation Act (HFCA) and the Florida Fair Housing Act. Specifically, it allows the Mortgage Revenue Bond Program under the HFCA to be included in the definition for elderly housing and allows funds from the Homeowner's Assistance Program to be used for certain programs other than those sponsored by the Corporation. It also increases the Corporation's bonding capacity from \$200 to \$400 million under the Florida Affordable Housing Guarantee Program. It also requires a qualifying facility or community claiming to be housing for older persons (and thus exempt from anti-discrimination provisions under the Fair Housing Act for excluding families with children) to register with the Florida Commission on Human Relations. Such registry information must be made available to the public and via the Internet. The Commission may impose a registration fee not to exceed \$20 and an administrative fee, not to exceed \$500, on a facility or community that knowingly submits false information.

The following sections of the Florida Statutes are amended: 420.503, 420.5088, 420.5092, 760.29 and 760.31.

II. Present Situation:

Fair Housing Act

Chapter 760, F.S., contains Florida's anti-discrimination law. It prohibits discrimination against persons in the areas of employment, housing, and public accommodations. Specifically, Part II of chapter 760, F.S., sets forth the Florida Fair Housing Act ("Act") which is based on the Federal Fair Housing Act. *See* ss. 760.20-760-37, F.S. The Act makes it illegal to discriminate against a

person on the basis of race, color, national origin, sex, handicap, familial status¹, or religion in the sale, rental, advertising, financing, or providing of brokerage services for housing or residential real estate transactions.

There are several exemptions to the Act, including an exemption for “housing for older persons” based on familial status. *See* s. 760.29(4), F.S. Therefore, communities, owners, or operators of “housing for older persons” may lawfully exclude families with children who are younger than 18 years of age. There are three major categories of housing that qualify for the “housing for older persons” exemption:

- (1) Housing specifically designed and operated for elderly persons under any state or federal program as determined by the Florida Commission on Human Relations;
- (2) Housing intended for, and solely occupied by, persons 62 years of age or older; and
- (3) Housing intended and operated for occupancy by persons 55 years of age or older that meets the following requirements:
 - a. At least 80 percent of the occupied units are occupied by at least one person 55 years of age or older.
 - b. The housing facility or community publishes and adheres to policies and procedures that demonstrate the housing is intended and operated for occupancy by persons 55 years of age or older or the facility or community is otherwise deemed to qualify as specified under state law².
 - c. The housing facility or community complies with certain federal rules.

See s. Section 760.29(4)(b), F.S.

Good faith reliance on the application for an exemption under s. 760.29, F.S., precludes liability for any violation as long as it can be shown that:

¹ “Familial status” refers to the situation in which at least one person who is younger than 18 years resides with: (a) A parent or other legal custodian; or (b) A parent or legal custodian’s designee pursuant to written permission. *See* s. 760.22(5), F.S.

² In 1999, the Florida Legislature enacted law to correct a problem in which certain housing facilities or communities could not qualify for the “housing for older persons” exemption although they otherwise satisfied the 80 percent occupancy requirement and the federal verification requirements. *See* ch. 99-348, L.O.F. Since some of these facilities or communities did not expressly meet the ‘publication of intent’ requirement and their governing documents did not permit amending the documents to include “intent,” they risked losing their status as housing for older persons. Therefore, such facilities and communities were allowed to still qualify if they met the following statutory requirements:

- (1) Met the 80 percent occupancy requirement and the federal verification requirements of ss. 760.29(4)(b)3. a. and c., F.S.;
- (2) Provided for an adult, senior, or retirement housing facility or community in their recorded governing document; and
- (3) Had governing documents that (a) lacked an amendatory procedure, (b) prohibited amendments, or (c) restricted amendments until a specified future date.

Furthermore, it provided that if the governing document expressly prohibited residents 16 years of age or younger, the provision in the document was to be construed to apply to residents 18 years of age or younger. Such construction was and is necessary to conform with the federal requirements and purposes of the Fair Housing Act. For all other facilities and communities whose governing documents could be amended at a future date, they had to be amend and record those amended documents no later than one year from that future date. Also, the amendment had to reflect the existing requirements for consideration as housing for older persons, if that housing facility or community intended to continue as housing for older persons.

- The person has no actual knowledge that the facility or the community is ineligible, or will become ineligible, for such exemption; and
- The facility or community has stated formally, in writing, that the facility or community complies with the requirements for such exemption. *See* s. 760.29(4)(d), F.S.

Florida Housing Finance Corporation Act

The Florida Housing Finance Corporation Act is contained in Part V of chapter 420, F.S., relating to housing. *See* ss. 420.501-420.530, F.S. The Florida Housing Finance Corporation was created within the Department of Community Affairs to administer a variety of state and federal affordable housing programs funded through state and federal funds and funds generated through the issuance of revenue bonds. These programs include programs such as the State Apartment Incentive Loan Program (SAIL), the State Housing Tax Credit Program, the Florida Affordable Housing Guarantee Program, the HOME Investment Partnerships Program (HOME), the Single-Family Mortgage Revenue Bond (MRB) Program, the Florida Homeownership Assistance Program (HAP), and the Multi-family Bond Program.

III. Effect of Proposed Changes:

Section 1 amends s. 420.503, F.S., relating to definitions applicable to the Florida Housing Finance Corporation Act in Part V of chapter 420, F.S. The definition for "elderly" in subsection (15) is amended to provide that this definition is not intended to disqualify housing otherwise qualifying as "housing for the elderly" as it is defined in subsection (19). "Housing for the elderly" is further defined to add "housing developed under multi-family and single family revenue bond programs under s. 420.508, F.S., to the list of housing that may qualify as "housing for the elderly" provided it qualifies as "housing for older persons" as defined in the Fair Housing Act (s. 760.29(4)), F.S.).

Section 2 amends section 420.5088, F.S., relating to the Florida Homeownership Assistance Program, to allow funds from this program to be used for qualifying persons or families other than just those sponsored by the Florida Housing Finance Corporation single family mortgage revenue bond programs.

Section 3 amends section 420.5092, F.S., relating to the Florida Affordable Housing Guarantee Program, to redefine "eligible housing" to include "housing for the homeless" to the types of affordable housing the Corporation may assist pursuant to this program and to increase the program's bonding capacity from \$200 million to \$400 million.

Sections 4 and 5 amend provisions of the Fair Housing Act in chapter 760, F.S. A facility or community claiming a "housing for older persons" exemption from the Fair Housing Act with respect to familial status must register with the Florida Commission on Human Relations (Commission). In order to register, a facility or community must submit a letter on the facility's or community's letterhead. The letter must be signed by the facility's or community's president stating that the facility or community is in compliance with the specified requirements. The registration must be renewed biennially. The registration does not substitute as proof of compliance with the other anti-discrimination requirements of the subsection. However, there is no penalty, sanction or disqualification for failure to comply with the registration requirement as long as the facility or community otherwise qualifies for the exemption.

The Commission must make the registry information available to the public and via its Internet website. The bill authorizes the Commission to establish a reasonable registration fee, not to exceed \$20, to defray the administrative costs associated with maintaining the registry. The bill also authorizes the Commission to impose an administrative fine, not to exceed \$500, on a facility or community that knowingly submits false information. Such fees and fines are to be deposited into the Commission's trust fund. The bill directs the Commission to adopt rules to specify the fee and the forms and procedures to be used for the registration required by this bill.

Section 6 provides the effective date of the bill is October 1, 2001.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Constitutional Issues:

The *Florida Constitution* authorizes the issuance of revenue bonds, without a referendum, for housing and housing related facilities for the purpose of providing low-interest mortgage loans to low- and middle-income families. *See s. 16, art. VII, Fla. Const.* It also requires that a state fiscal agency make a determination before bonds can be issued that the debt service requirements of the bonds proposed to be issued and all other bonds secured by the same pledged revenues do not exceed the pledged revenues available for payment of such debt service requirements. To the extent that this bill expands the authority of the housing finance corporation to issue revenue bonds from \$200 million to \$400 million, this constitutional bond obligation will need to be met prior to the issuance of the revenue bonds.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The bill authorizes the Florida Commission on Human Relations to establish a reasonable registration fee, not to exceed \$20 and to impose an administrative fine, not to exceed \$500, on any facility or community that knowingly submits false information. These fees and fines are to be deposited into the Commission's trust fund to defray the administrative costs of maintaining the registry.

B. Private Sector Impact:

According to the Florida Board of Realtors, there are over 15,000 facilities or communities that qualify as housing for older persons. For those communities or facilities that register, they will be required to pay a registration fee not to exceed \$20.

To the extent that the bill facilitates the availability and promotion of affordable housing through increased funds, the bill should benefit the homeless, low-income and elderly persons and families as well potentially benefit the construction industry involved in building affordable and benefit the constructing and construction-related industries that provide construction of affordable housing.

C. Government Sector Impact:

The Florida Commission on Human Relations anticipates additional administrative costs as a result of implementing the requirements of the bill; however, these costs may be defrayed by registration fee revenue. According to the Commission the revenue from the registration fee may not be sufficient to defray the cost of maintaining the registry or otherwise implementing this bill. No authority is given to the Commission to enforce this registry requirement. Thus, failure to comply with this registry requirement does not jeopardize a facility's or community's qualification for the exemption status as long as the facility or community has otherwise satisfied all other criteria.

However, no analysis or other fiscal information is available from the Florida Housing Finance Corporation as to the impact of the amendments incorporated into the CS/CS/SB 294.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.