

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1363 Affordable Housing
SPONSOR(S): Davis and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Growth Management Committee		Grayson	Grayson
2) Local Government Council			
3) Fiscal Council			
4) State Infrastructure Council			
5)			

SUMMARY ANALYSIS

HB 1363 addresses the issue of affordable housing by:

- Creating the Community Workforce Housing Innovation Program (CWHIP), a program which incents public-private partnerships and the use of joint resources to provide affordable rental and single-family housing opportunities, in high-cost counties, to persons with medium incomes.
- Providing CWHIP grant eligibility.
- Authorizing special districts to provide housing assistance to their employees.
- Providing guidance for the assessment of just valuation of affordable housing when a cap rate is used.
- Providing a property exemption for affordable housing property owned by a nonprofit entity.
- Providing guidance for assessment of just valuation of affordable housing.
- Removing the cap on the distribution of documentary stamp revenues to the State Housing Trust Fund, which cap is scheduled to be implemented in FY 2006-2007.
- Lowering the mortgage loan rate for Corporation loans under the State Apartment Incentive Loan Program when the project targets certain populations.
- Providing authority for school boards to provide affordable housing for teachers and other instructional personnel.

The impacts to state and local governments are indeterminate.

The bill has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty – The bill increases the options of individuals and certain private organizations in the conduct of their own affairs.

Empower families – The bill increases the opportunities of local governments, governmental entities, and private organizations to support, assist, and encourage families in circumstances occasioning need; and increases family stability, self support, and management.

B. EFFECT OF PROPOSED CHANGES:

This bill creates the Community Workforce Housing Innovation Program (CWHIP), a program which incents public-private partnerships and the use of joint resources to provide affordable rental and single-family housing opportunities, in high-cost counties, to persons with medium incomes.

Florida Housing Finance Corporation (Corporation): The bill establishes the Corporation as the entity responsible for the implementation of this program. Corporation is directed to implement this program by providing financial and regulatory incentives to both the public and private sectors for the purpose of developing and financing innovative rental and home-ownership housing solutions for eligible persons. The bill also directs the Corporation to develop selection criteria for selecting housing innovation projects in certain areas; and to provide incentives for the use of State Housing Initiative Partnership Program (SHIP) funds.¹

Definitions: The bill directly or indirectly defines several terms as follows:

- “Counties in high-cost areas of the state”² is directly defined as “those counties in which the average median purchase price of a single-family home is above the state median purchase price of a single-family home.
- “Areas of critical state concern”³ is indirectly defined as those areas designated under s. 380.05, F.S., for which the Legislature has declared its intent to provide affordable housing.⁴ One of the five designated ACSC areas appears to comply with this indirect definition: Florida Keys ACSC (s. 380.0552, F.S.).
- “Project partnerships”⁵ is indirectly defined to include substantial involvement of public sector entities (examples given are: local municipalities, counties, school districts, special districts, and other units of local government) and private sectors entities, “that donate land or other tangible value worth at least 15 percent of the project value.”

¹ See DRAFTING ISSUES OR OTHER COMMENTS for a discussion of two phrases contained in s. 1(3) of the bill that may benefit from amendment.

² See bill s. 1(3).

³ See bill s. 1(3).

⁴ Established in Chapter 380.05, Florida Statutes, the Area of Critical State Concern (ACSC) program protects resources and public facilities of major statewide significance. Designated Areas of Critical State Concern are: City of Apalachicola; City of Key West; Green Swamp; Florida Keys (Monroe County); and the Big Cypress Swamp (Miami-Dade, Monroe and Collier counties). In ACSCs, Department of Community Affairs (DCA) staff review all local development projects and may appeal to the Administration Commission any local development orders that are inconsistent with state guidelines. The DCA is also responsible for reviewing and approving amendments to comprehensive plans and land development regulations proposed by local governments within the designated areas.

⁵ See bill s. 1(4)(b).

- “Essential services personnel”⁶ is indirectly defined to include teachers and educators, police and fire personnel, health care personnel, and other job categories in which the personnel are defined as essential services personnel within the annual local SHIP program.
- “Innovative projects”⁷ is indirectly defined to include “new construction or rehabilitation of existing housing, mixed-income housing, or commercial and housing mixed-use elements.”

Targets⁸: The bill mandates that the Corporation target the following:

- Counties in high cost areas of the state.
- Project partnerships, as defined in the bill.
- Persons in households with income levels up to 150 percent of the adjusted median income (AMI) in prioritized areas, or a higher AMI in areas of critical state concern.
- Essential services personnel in need of affordable housing; Innovative projects, as defined in the bill.

Supplemental Program⁹: The bill provides that the CWHIP shall supplement and not supplant existing affordable housing programs funded under ch. 420, F.S., relating to housing.

Annual Review and Report¹⁰: The bill requires the Corporation to conduct an annual review of the success of the CWHIP. Additionally, the bill requires the Corporation to annually review ways to improve public and private sector incentives and barriers to affordable and community workforce housing. The Corporation is required to submit any recommendations for strengthening the program to the Governor, the Speaker of the House of Representatives, and the President of the Senate by January 1 each year. The bill authorizes the Corporation to request assistance in these matters from the DCA or the Affordable Housing Study Commission¹¹. The review will include:

- Determination of how the program supports traditional affordable housing programs defined in ch. 420, F.S.
- Determination of whether the program is meeting housing needs of high-cost counties.

Approved Applicant Benefits¹²: Approved applicants are eligible for the following to ensure the financial viability, successful development, and ongoing maintenance of the housing developments:

- Expedited approval of development orders and development permits.
- Reduction of impact fees by 50%, waiver of impact fees, or alternative method of fee payment.
- Increased density up to 16 units per acre or higher, except in coastal high hazard areas.
- Reserved infrastructure capacity in the local comprehensive plan.
- Allowance of additional housing units in residential zoning districts.
- Reduction of open space and set back requirements.
- Allowance of zero-lot-line configurations.
- Reduction of traffic concurrency requirements by up to 25%.
- Priority eligibility for local transportation infrastructure funding by metropolitan planning organizations.

⁶ See bill s. 1(4)(d).

⁷ See bill s. 1(4)(e).

⁸ See bill s. 1(4).

⁹ See bill s. 1(5).

¹⁰ See bill s. 1(6).

¹¹ The Affordable Housing Study Commission was created in 1986 pursuant to the provisions of s. 420.609, F.S. Each year the Commission makes public policy recommendations to the Governor and Legislature to stimulate community development and revitalization to promote the production, preservation, and maintenance of safe, decent affordable housing for all Floridians.

¹² See bill s. 1(8)(a).

Local government acceptance of these incentives is conditioned upon:

- The applicant's receipt of a letter of support from the local government; or
- Failure of a local government vote to object to the applicant's plan within 60 days after local government's receipt of applicant's plan.

If the local government votes not to accept the project in the county, then the Corporation shall remove the application from its approved funding list.

Program Funding¹³

Grant Eligibility: The bill provides that the Corporation, subject to appropriations, has the authority to provide grants for construction or rehabilitation of rental or single-family community workforce housing, providing that the applicant meet at least one of the following criteria:

- Sets aside at least 80% of the units for eligible persons with a household income not exceeding 150% of AMI.
- Sets aside up to 60% of the units prioritized for essential public service personnel; which projects identify sales and leasing strategies to accomplish this set aside and to sell or lease units to other qualified individuals if essential service personnel are immediately available of qualified.
- Limits rentals to no more than 30% of the maximum household income adjusted to unit size.
- Limits the sales price of a house to the price for which an eligible applicant at 150% of AMI may qualify.

Requests for Proposal (RFP): The bill requires the Corporation to issue a RFP to solicit applications and to develop a funding distribution process. Grants are to be based upon financial need. The priority of grants shall be for high-cost counties with the highest real estate cost burdens for housing, including ACSCs, and counties with the highest average median price of a single-family home. The Corporation is authorized to approve a project that does not require funding.

Application Criteria: Eligible applications shall:

- Demonstrate a public-private partnership of at least one local government or special district and one private partner.
- Demonstrate how the regulatory incentives will be used, and include any letters of support from local government partner regarding the regulatory incentives.
- Demonstrate that the applicant possesses title to, or "firm control" of, land; and availability of required infrastructure.
- Provides supporting research or facts of rental or home ownership workforce housing demand and need.
- Have at least 15%, evidenced by a letter of commitment, of the total development cost provided by grants, donations of land, or contributions from other sources.
- Demonstrate accessibility to employment opportunities or a plan to provide transportation access to such opportunities.
- Demonstrate a marketing and sales plan to ensure residents fit the income requirements and program workforce demands.
- Provide a viable pro forma financial statement for the development.

Review Committee: The bill requires the Corporation to establish a staff review committee and scoring system.

¹³ See DRAFTING ISSUES.

Evaluation and Ranking Criteria: The bill requires the Corporation to develop evaluation and ranking criteria that utilize the application criteria listed above and emphasize the following:

- Innovative planning concepts
- Innovative building design.
- Local government participation.
- Public-private partnerships.
- Ability to proceed with construction.
- The feasibility and economic viability of the project
- The applicant's affordable housing development and management experience.
- The ability to meet essential service personnel needs.
- A management plan to attract, serve, and keep eligible workforce tenants and ensure the long-term affordability of the rental or ownership units.
- The quality of project design.¹⁴

Grant Award and Accountability: The bill requires the Corporation to develop rules and procedures for awarding of, and accounting for, grants.¹⁵

Default: If a grantee defaults on the grant, the Corporation may foreclose or take necessary legal action to protect its interests and to recover the amount of the grant principal, accrued interest and fees. Additionally, the Corporation may acquire real or personal property or interest therein, when necessary to protect grant; or to sell, transfer, and convey such property to a buyer without regard to ch. 253 or ch. 270, F.S. (both relating to state lands).¹⁶

Down Payment Assistance Program: The bill requires the Corporation to develop and implement a down payment assistance program to meet the needs of eligible individuals to purchase workforce housing. Additionally, Corporation is to encourage local governments to meet the same needs through their State Housing Initiatives Partnership plans (s. 420.9075, F.S.).¹⁷

Conversion of Existing Multifamily Rental to Ownership: The bill requires the Corporation to develop rules and guidelines for the conversion of existing affordable multifamily rental apartments to affordable home ownership units within the target areas. Project eligibility requires are:

- Being in operation and compliance with the Corporation's rules for at least 5 years.
- Demonstrating the guarantee of a term of affordability for home ownership in the deed restrictions or financing restrictions equal to the term of affordability provided under the rental agreement.
- Demonstrating an affordable home ownership purchase price, approved by the Corporation, based on the average median purchase price of a home in the county for persons whose incomes do not exceed 150% of the county area median income (AMI).
- Provide current apartment renters the first opportunity to purchase converted units.

The Corporation may approve only 15% of available affordable rental projects as eligible for conversion in any high-cost county in any single year. Priority in the Corporation's annual funding cycle must be given to replacing rental unit stock converted to ownership.¹⁸

Local Public Input: The Corporation shall require, and develop criteria for obtaining and documenting, public input.¹⁹

¹⁴ See bill s. 1(5).

¹⁵ See bill s. 1(6).

¹⁶ See bill s. 1(7).

¹⁷ See bill s. 1(8).

¹⁸ See bill s. 1(9).

¹⁹ See bill s. 1(10).

Special Districts – Authority to Provide Housing and Housing Assistance to Employees

The bill provides authority for independent special districts, created for the purpose of providing urban infrastructure of services, to provide housing and housing assistance for its employees.²⁰

Low-Income Housing Tax Credit

The bill provides guidance for the assessment of just valuation of affordable housing when a cap rate is used.²¹

Nonprofit Entity Ownership and Affordable Housing Property Exemption

The bill provides a property exemption for affordable housing property owned by a nonprofit entity.²²

Just Valuation of Affordable Housing Properties

The bill provides guidance for assessment of just valuation of affordable housing. Certain properties used by persons with income limits defined as low, moderate, and very low, shall be assessed according to the actual income from rent-restricted units, and the income shall be used.²³

Cap on State Housing Trust Fund

The bill removes the cap on distribution of documentary stamp tax revenues to the State Housing Trust Fund, which cap is set to take effect on July 1, 2006.²⁴

Corporation Mortgage Rates

The bill lowers the mortgage loan rate for Corporation loans under the State Apartment Incentive Loan Program when the project targets the populations addressed in this bill.²⁵

School Boards

The bill authorizes school boards to provide affordable housing for teachers and other instructional personnel.²⁶

Background

The state has committed significant resources over the last decade to addressing the severe housing problems facing very low and low income residents of this state. Florida Housing Finance Corporation's programs are funded in part with revenues generated by the documentary stamp tax, which are most often coupled with federal funding. These "affordable housing" programs have traditionally targeted families making 60% or less in the rental programs, and those making 80% or less of AMI in the home ownership programs.

Multifamily rental projects are funded by Florida Housing through the State Apartment Incentive Loan (SAIL) gap loan program, the Multifamily Mortgage Revenue Bond (MMRB) program, which provides funding by issuing revenue bonds, and through allocation of federal Low Income Housing Tax Credits

²⁰ See ss. bill 3 and 4.

²¹ See bill s. 5.

²² See bill s. 6.

²³ See bill s. 7.

²⁴ See bill s. 8.

²⁵ See bill s. 9.

²⁶ See bill s. 10.

(LIHTC), which provides an equity infusion to multifamily affordable housing projects. The multifamily rental programs typically target those making 60% or less of the area median income (AMI). Home ownership programs consist of down payment assistance, funded by doc stamp funds and federal funds, along with mortgage loans funded by federal funds and the Single Family Mortgage Revenue Bond (SFMRB) program. Also, Florida Housing allocates documentary stamp funds to local governments through the State Housing Initiatives Partnership (SHIP). The large majority of SHIP funds are directed by statute toward home ownership activities, generally serving those with incomes up to 120% AMI.

Federal housing programs, especially those administered by HUD, typically serve those with the lowest incomes. In recent years, budgets for many of these programs have been cut, putting increasing pressure on state and local governments to provide for persons at the lowest income levels. In the current market, the need for affordable housing has outstripped the production capacity of the existing federal, state, and local affordable housing programs.

Due to dramatic increases in housing costs coupled with modest rises in incomes, many low income and moderate income Florida families can no longer afford safe, decent and affordable rental and single family housing,

In addition to the needs of the very low and low income families noted above, recent steep increases in real estate prices have also effectively priced moderate income families out of the market. Florida is experiencing a critical shortage of housing for individuals who are employed in essential service occupations, such as teachers, police, hospital workers, and others who do not qualify for existing affordable housing programs. As a result, many communities are finding it increasingly difficult to recruit, employ, and retain personnel necessary to provide essential public services to Florida's communities.

The need for "workforce housing" to meet existing and future housing needs for working families whose incomes, from 80% to 150% AMI typically make them ineligible for existing housing programs, has recently become increasingly evident.

C. SECTION DIRECTORY:

Section 1 - Creates law creating the Community Workforce Housing Innovation Program.

Section 2 - Creates law to provide for program funding.

Section 3:- Creates s. 189.4155(6), F.S., authorizing independent districts to provide housing and housing assistance for its employed personnel.

Section 4 – Creates s. 191.006(19), F.S., expanding the powers which a special district may exercise by majority vote to include the power to provide housing or housing assistance for its employed personnel.

Section 5 – Creates s. 193.017(5), F.S., relating to the use of a cap rate for assessing just valuation of affordable housing properties.

Section 6 – Amends s. 196.1978, F.S., relating to the affordable housing property exemption from ad valorem taxation.

Section 7 – Creates s. 196.1980, F.S., providing for the use of actual rental income as the basis for assessing just valuation of certain affordable housing properties.

Section 8 – Amends ss. 201.15(9) and (10), F.S., effective July 1, 2007, removing the caps related to distribution of certain tax revenues for the State Housing Trust Fund.

Section 9 – Amends s. 420.507(22)(a), F.S., lowering the interest rate paid for certain loans from the Florida Housing Finance Corporation by sponsors of projects targeted at certain

Section 10 – Amends s. 1001.42(9)(b), F.S., authorizing school boards to provide affordable housing for teachers and other instructional personnel independently or in conjunction with certain other agencies.

Section 11 - Provides an effective date of July 1, 2006, or as otherwise provided in the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. The state may be benefited by the provision of essential workforce housing in support of commerce which may result in increased state revenues.

2. Expenditures:

Indeterminate. The level of funding to support the CWHIP is not established in this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. Local governments may be benefited by the provision of essential workforce housing in support of commerce which may result in increased state revenues.

2. Expenditures:

Indeterminate. The bill provides encouragement and opportunity for local government to support the affordable housing efforts advanced by this bill, but does not require any particular level of financial commitment.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a beneficial impact on the private sector in the following manner:

- Provides incentives for the private sector development and provision of affordable housing.
- Provides housing opportunities for certain types of employees, thus supporting some private and public employers by authorizing means by which they may assist employees to secure affordable housing.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

There do not appear to be any other constitutional issues.

B. RULE-MAKING AUTHORITY:

The bill does contain rulemaking authority as follows:

- For the development of certain selection criteria [s. 1(3)].
- For awarding and accountability of grants [s. 1(6)].
- For providing conversion of existing affordable multifamily rental apartments to affordable home ownership units within the target areas [s. 1(9)].

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 1(3) of the bill - Requires the Corporation to develop certain selection criteria either by rule or by requests for proposals. The bill does not make clear how such criteria would be developed through an RFP process; and may benefit from some further clarification. Perhaps the language should read: “The corporation shall develop selection criteria by rule for requests for proposal to...”

Section 1(3) of the bill - Contains a phrase “critical concerns areas of the state” (lines 63-64) which appears to relate to “areas of critical state concern.” The former has no definition, the latter is an area designated pursuant to s. 380.05, F.S. The phrase should be changed to “an area of critical state concern.”

Section 1(7) of the bill - The term “community workforce housing” (lines 114 and 137) is undefined.

Section 2 of the bill – The section is named “Program funding.” The section more specifically addresses program funding eligibility and should be renamed for clarity.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.