

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 699 Affordable Housing

SPONSOR(S): Policy & Budget Council; Economic Expansion and Infrastructure Council, Aubuchon & others

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Economic Development</u>	<u>9 Y, 0 N</u>	<u>Rojas</u>	<u>Croom</u>
2) <u>Economic Expansion & Infrastructure Council</u>	<u>14 Y, 0 N, As CS</u>	<u>Rojas/Madsen</u>	<u>Tinker</u>
3) <u>Policy & Budget Council</u>	<u>32 Y, 0 N, As CS</u>	<u>Diez-Arguelles</u>	<u>Hansen</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill substantially revises and updates ss.159.807, 196.1978, 420.5087, 420.5095, 420.628, 420.9071, 420.9073, 420.9075 and 420.9076 which govern the implementation of the numerous affordable housing practices and procedures statewide.

In addition, the bill amends s. 420.5061 to remove the provision requiring the Florida Housing Finance Corporation (FHFC) to pay a General Revenue service charge.

The bill also expands the availability of property tax exemptions for properties owned by charitable entities and used to provide affordable housing.

The bill also expands the uses of revenues from the Tourist Development Tax and the Local Government Infrastructure Surtax to include certain uses for affordable housing.

The bill has a negative fiscal impact on the General Revenue Fund of \$700,000.

The Revenue Estimating Conference has determined that the provisions of this bill reduce the ad valorem tax base. At current millage rates, the changes proposed in this bill reduce local government revenues in FY 08-09 by \$1.4 million (adding limited partnerships to exempt entities), and by \$500,000 (grant of exemption for affirmative steps in preparing land for affordable housing).

The bill has an effective date of July 1, 2008

FULL ANALYSIS

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower families – The bill will increase the minimum allocation of SHIP funding, offsetting the growing number of households seeking assistance for affordable housing.

Provides limited government - The bill updates the State Housing Initiatives Partnership (SHIP) Act allowing for more efficient implementation by the Florida Housing Finance Corporation.

B. EFFECT OF PROPOSED CHANGES:

Tourist Development Tax to Benefit Affordable Housing

Section 125.0104(3), F.S.: Allows Monroe County and any other county the state has designated as an area of critical state concern to use the proceeds of the High Tourism Impact Tax authorized in Sec. 125.0104(3)(m), F.S., for affordable, workforce, or employee housing.

Mortgage Revenue Bond (MRB) Program

Section 159.807(4), F.S.: governs the State allocation pool and the MRB program. Recently, the way the statute has implemented bond allocations for the past fifteen years has been called into question. The bill clarifies language in statute to make clear that the current implementation procedure being used is correct.

Ad Valorem Tax Exemption for Affordable Housing Property

Section 196.1978, F.S.: expands the ad valorem tax exemption for affordable housing properties. Some entities considered tax exempt by the IRS for charitable non-profit housing purposes will also be considered tax exempt by the state. The bill also provides that undeveloped property owned by an exempt entity is considered used for an exempt purpose as long as the owner can document that affirmative steps are being taken to prepare the property for affordable housing for eligible residents. If the property is transferred for a purpose other than providing affordable housing or if the property is not providing affordable housing within five years, the total amount of taxes and interest for the period such exemption was effective becomes due and payable. The five year period can be extended if the owner can demonstrate that affirmative steps are being taken to develop the property.

Local Government Infrastructure Surtax Revenues Used to Benefit Affordable Housing

Section 212.055, F.S., is amended to allow proceeds of the local government infrastructure surtax to be used for a land expenditure acquisition for a housing project. At least 30% of the units must be used to provide affordable housing to individuals or families whose household income does not exceed 120 percent of the area median income.

General Revenue Service Charge Repeal

Present Situation

Pursuant to s. 420.5061, F.S., the FHFC is required to transfer to the General Revenue Fund an amount which otherwise would have been deducted as a service charge if the FHFC Fund, the State Apartment Incentive Loan Fund, the Florida Homeownership Assistance Fund, the HOME Investment Partnership Fund and the Housing Predevelopment Loan Fund were each trust funds.

Section 15 of HB 7009 provided for the transfer of \$7,423,862 from the State Housing Trust Fund to General Revenue in order to satisfy the FHFC's outstanding obligation as of December 31, 2007. FHFC claims that no further general government costs have been incurred under s. 420.5061, F.S., since January 1, 1998 owing to the fact that it has internally assumed the services formerly provided by DFS to the Agency.

Effect of the Bill

The bill amends s. 420.5061, F.S., to repeal the provision requiring the FHFC to transfer service charges to General Revenue. The repeal would divert approximately \$700,000 annually from General Revenue to the FHFC.

Florida Public Housing Authority Grant Program

Section 420.507(47), F.S.: is created to allow the FHFC to develop and administer the Florida Public Housing Authority Preservation Grant Program aimed at preserving and rehabilitating public housing authority buildings that are 30 years or older.

State Apartment Incentive Loan (SAIL) Program

Section 420.5087(6)(c)16., F.S.: Adds green building principles, storm resistant construction, or other elements that reduce long-term costs relating to maintenance, utilities, or insurance as criteria to be considered by FHFC in its scoring and competitive evaluation of applications for funding under the SAIL program.

Section 420.5087(6)(l), F.S.: Allows use of SAIL funds for moderate rehabilitation and preservation of existing affordable units.

Community Workforce Housing Innovation Pilot (CWHIP) Program

Section 420.5095, F.S.: is created to allow prioritization of declined or returned funds for projects aimed at providing housing for teachers and other instructional personnel employed by local school districts.

Affordable housing land donation density bonus incentives

Section 420.615, F.S.: provides that local governments may provide density bonus incentives to landowners who donate property for the purpose of assisting local governments in providing affordable housing. Donated property is subject to a determination by the local government for suitable use as affordable housing. This provision is intended to clarify existing law.

The Department of Community Affairs has argued that this provision of law is not clear enough to treat these density bonuses as a small scale amendment. As a result, confusion at the local level persists, creating a chilling effect on affordable housing donation agreements. The change in language reasserts that the density bonuses received by a landowner as a result of a land donation for affordable housing is a small scale amendment.

Affordable Housing for Children and Young Adults Leaving Foster Care

Section 420.628, F.S.: is created, and qualifies children and young adults leaving foster care under statute as eligible persons for consideration for affordable housing assistance. The bill also provides guidance to the FHFC in developing and implementing strategies for establishing a suitable transition for those young persons leaving foster care.

State Housing Initiatives Partnership Act (SHIP) Statutory Definitions

Present Situation

Under current law s. 420.503, F.S., establishes general definitions relating to the FHFC and s. 420.9071, F.S., establishes numerous statutory definitions for the implementation of the SHIP Act by the FHFC. The SHIP program provides funds to local governments on a population-based formula as an incentive to produce and preserve affordable housing.

Effect of the Bill

The bill makes the following changes to the statutory definitions:

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Section 420.503, F.S.: Creates a new definition for moderate rehabilitation, to allow SAIL funds to be used to preserve (cost from \$10,000 up to 40% of unit value) units that are less deteriorated than those requiring “substantial rehabilitation.”

Section 420.9071 (4), F.S.: Updates the definition of “Annual gross income.” The change would allow FHFC by rule, to approve additional income verification methods consistent with verification methods currently utilized in the lending industry.

Section 420.9071 (8), F.S.: Updates the definition of “Eligible housing” to include manufactured homes that meet the standards of the Florida Building Code or predecessor building codes or manufactured housing constructed after 1994. Following the Hurricane Housing Work Group’s recommendation in 2005, FHFC used Hurricane Housing Recovery Program funds for manufactured housing assistance. Since 2006, the Community Workforce Housing Innovation Pilot Program (“CWHIP”) has included language identical to this.

Section 420.9071 (16), F.S.: Changes the definition of “Local housing incentive strategies” to allow the affordable housing advisory committee to propose additional incentive strategies for the local housing assistance plan.

Section 420.9071 (25), F.S.: Revises the definition of “Recaptured funds” to clarify the difference between recapture and program income. Currently, funds are categorized as recaptured when there is a default on a loan. The change would clarify that funds are only designated as recaptured when no eligible unit is assisted with the funds being recaptured. This also would allow FHFC to track the use of funds more accurately.

Section 420.9071(29), F.S.: Creates new subsection to define “Assisted housing,” as housing that receives funding from any federal or state housing program.

Section 420.9071(30), F. S. Creates new subsection to define “Preservation,” to categorize actions taken to keep rents affordable in existing assisted housing while ensuring that units remain in good physical condition.

Local Housing Distributions of SHIP Funding

Present Situation

Under current law s. 420.9073, F.S., establishes the criteria and manner of local housing distributions of the SHIP Act by the FHFC.

Effect of the Bill

The bill makes the following changes regarding the distribution of SHIP funds:

Section 420.9073 (1) and (2), F.S.: Allows FHFC to distribute funds on a quarterly basis rather than a monthly basis. The change would allow FHFC to distribute funds to local governments consistent with the schedule for release of funds by the state to FHFC.

Section 420.9073 (5), F.S.: Allows FHFC to set aside \$5 million each year in SHIP funds to fund disaster needs based on damage and recovery need. This change will allow FHFC to reserve funds to allocate to local governments for the purpose of quickly addressing housing needs in areas that are affected by a disaster situation as declared by the Governor. Funds not used for this purpose will be distributed to the local governments by the end of the year.

Section 420.9073 (6), F.S.: Allows FHFC to set aside up to \$5 million each year in SHIP funds for local governments to purchase homes which have existing SHIP subsidies and that are subject to foreclosure. This change will allow for such homes to be resold through the SHIP program. The proposed statutory language provides options for how the local government using this fund will repay funds used for this purpose so that no local government will receive additional SHIP funds beyond their annual allocation. This pool would allow local

governments that have already encumbered all current funds to move quickly in a foreclosure situation. Funds not used for this purpose will be distributed to the local governments by the end of the year.

Section 420.9073 (7), F.S.: Clarifies that all counties or municipalities receiving SHIP funds must comply with Florida law, program rules, and the local housing assistance plan.

Development and Implementation of Local Housing Assistance Plans

Present Situation

Under current law, s. 420.9075, F.S., requires counties and eligible municipalities participating in the SHIP program to develop and implement a local housing assistance plan to make available affordable residential units to specified persons.

Additionally, s. 420.9076, F.S., requires counties and eligible municipalities participating in the SHIP program, after adopting a local housing assistance plan pursuant to s. 420.9075, F.S., to amend that plan within 12 months to include local housing incentive strategies.

Effect of the Bill

The bill makes the following changes to local housing assistance plans:

Section 420.9075(1)(a) and (5)(d), F.S.: Allows local governments to increase the area median income (AMI) limit on households served from 120% to 140% for areas determined by FHFC rule to be “high cost” areas. This change allows local governments to serve workforce households in areas where the cost of housing is above the state median pricing.

Section 420.9075(3)(d), F.S.: Requires local governments to state in their local housing assistance plans how they plan to address innovative design, green building, storm resistant construction and other elements that reduce long term costs. This change requires that local governments consider how current and emerging building and design techniques should be integrated into affordable housing strategies both for sustainability and to promote greater affordability.

Section 420.9075(3)(e), F.S.: Creates new paragraph (e) to encourage local governments to develop preservation strategies within local housing assistance plans.

Section 420.9075(5)(c), F.S.: is created and limits the expenditure of SHIP funds on manufactured housing to 15 percent.

Section 420.9075(5)(d), F.S.: is renumbered and extends income restriction exemption requirements for Monroe County. The Legislature has declared its intent to provide affordable housing for areas of critical state concern, areas such as Monroe County, are presently exempt from the statutory reservation of SHIP funds specifically for low-income and very-low-income persons, allowing funding to households at or below 120% of AMI. This exception is set to expire July 1, 2008; this would extend the exemption to July 1, 2013, based on continuing high housing costs relative to incomes.

Section 420.9075(5)(l), F.S.: Clarifies and outlines the parameters in which funds may be awarded as grants rather than loans: most SHIP funding is now provided in the form of loans including deferred payment and forgivable loans. This change clarifies when a local government can grant SHIP funds without any terms for repayment or recapture. This change will increase the amount of funds recycled through SHIP to assist additional households.

Section 420.9075(5)(k), F.S.: Provides funding for preconstruction preservation activities and that under certain circumstances such funds shall not be considered as administrative expenses.

Section 420.9075(10)(a), F.S.: Adds “persons with disabilities” to the list of demographics that must be tracked by the local governments. This change allows FHFC to track the number of households with a person with a disability which are served through the SHIP program.

Section 420.9075(10)(h), F.S.: Revises language to allow FHFC to require the tracking of additional program information by the local governments as necessary. This change adapts annual reporting requirements to allow FHFC to supply additional data needed to provide information on the performance of the program.

Section 420.9075(14), F.S.: Requires repayment of SHIP funds if these funds are found to be expended on ineligible activities. This change would give FHFC the ability to require that funds found to be used for ineligible expenditures be repaid by the local government to the local program’s affordable housing trust fund.

Section 420.9076(2)(h), F.S.: Allows a local government to appoint a “designee” to its affordable housing advisory committee in place of the Local Planning Agency (LPA) committee member in cases where the elected body acts as the LPA. This change would allow for circumventing conflicts where the LPA is the elected body of the local government.

Section 420.9076(5) and (6), F.S.: Amends language concerning the affordable housing advisory committee reporting requirements. This change clarifies that the committee’s evaluation and report must be adopted by the committee, must contain a summary, be available for the public to obtain, and be submitted to FHFC.

Deletion of s. 420.9078, F.S.

Present Situation

Section 420.9078, F.S., establishes criteria and methodology for the distribution of funds that remain in the Local Government Housing Trust Fund.

Effect of the Bill

The deletion of s. 420.9078, F.S., is tied to the implementation of s. 420.9073 (5), F.S., which will allow FHFC to set aside \$5 million each year to fund disaster needs based on damage and recovery need. This change will allow FHFC to reserve funds to allocate to local governments to quickly address housing needs in areas that are affected by a disaster situation as declared by the Governor. Funds not used for this purpose will be distributed to the local governments at the end of the year.

School Board Use of Surplus Land for Affordable Housing in Areas of State Critical concern

Section 1001.43 (12), F.S.: Allows school boards in areas deemed by the legislature to be areas of critical state concern to utilize surplus land for affordable housing for teachers and other essential services personnel, such as fire, police and health care workers as defined by local affordable housing plans.

C. SECTION DIRECTORY:

Section 1: Amends s. 125.0104, F.S., to allow local bed tax to be used for affordable housing.

Section 2: Amends s. 159.807, F.S., to clarify the non-taxable revenue bond allocation process.

Section 3: Amends s. 196.196, to describe activities that are considered use of property for a charitable purpose.

Section 4: Amends s. 196.1978, F.S., to amend the ad valorem tax exemption for property used for affordable housing.

Section 5: Amends w. 212.055, F.S., to expand the uses of the local government infrastructure tax.

Section 6: Amends s. 420.503, F.S., to create a definition of Moderate Rehabilitation.

Section 7: Amends s. 420.5061, F.S., to remove the provision requiring the Florida Housing Finance Corporation to pay a General Revenue service charge at the time of original transfer or rights and liabilities from the Florida Housing Finance Agency to the FHFC.

Section 8: Creates s. 420.507(47), F.S., created to allow the FHFC to develop and administer the Florida Public Housing Authority Preservation Grant Program.

Section 9: Amends s. 420.5087, F.S., to allow use of SAIL funds for moderate rehabilitation and preservation of existing affordable units. Creates s. 420.5087(16), F.S., to add Green-building practices to scoring system for distribution of SAIL funds.

Section 10: Creates s. 420.5095, F.S., to allow return or declined CWHIP program funds to be used for teacher housing.

Section 11: Amends s. 420.615, F.S., to clarify legislative intent relating to Density bonuses.

Section 12: Creates s. 420.628, F.S., to address affordable housing for persons leaving foster care.

Section 13: Amends s. 420.9071(4), (8), (16), and (25), and creates (29) and (30) F.S., addressing select definitions of the State Housing Initiative Partnership Act

Section 14: Amends s. 420.9072(6), F.S., to eliminate reference to s. 420.978, F.S.

Section 15: Amends s. 420.9073, F.S., revising the criteria and manner of local housing distributions of the State Housing Initiatives Partnership Act by the FHFC.

Section 16: Amends s. 420.9075, F.S., revising local housing assistance plan requirements for counties and eligible municipalities participating in the State Housing Initiatives Partnership program.

Section 17: Amends s. 420.9076, F.S., revising requirements for counties and eligible municipalities participating in the SHIP program. This change requires local governments after adopting a local housing assistance plan pursuant to s. 420.9075, F.S., to amend that plan within 12 months to include local housing incentive strategies.

Section 18: Repeals s. 420.9078, F.S., which directs the state administration of remaining local housing distribution funds.

Section 19: Amends s. 420.9079, F.S., conforming references.

Section 20: Amends s. 1001.43(12), F.S., to allow areas of Critical State Concern to use surplus land for housing for teachers and other essential services personnel.

Section 21: Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The repeal of s. 420.5061, F.S., diverts approximately \$700,000 annually from the General Revenue Fund to the FHFC.

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has determined that the provisions of this bill reduce the ad valorem tax base. At current millage rates, the changes proposed in this bill reduce local government revenues in FY 08-09 by \$1.4 million (adding limited partnerships to exempt entities), and by \$500,000 (grant of exemption for affirmative steps).

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will increase accessibility to affordable housing by increasing the minimum allocation of SHIP funding to the growing number of households seeking assistance for affordable housing.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision applies, since the bill reduces the authority that cities and counties have to raise revenue. However, the reduction is estimated to be less than \$1.9 million; therefore, the bill is exempt from the mandates provision.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 20, 2008, a strike-all amendment was adopted with one technical amendment to the strike-all amendment by the Economic Development Committee, and the bill was reported favorably.

The amendment changed the following:

- **Section 159.807(4)(b), F.S.:** is deleted clarifying that the non-taxable revenue bond allocation process currently implemented is the correct procedure.
- **Section 196.1978, F.S.:** clarifies the Ad Valorem Exemption for Non-Profit Housing Property. Entities considered tax exempt by the IRS for charitable non-profit housing organizations will also be considered tax exempt by the state of Florida.
- **Section 420.503(42), F.S.:** is created to include a definition for moderate rehabilitation, allowing State Apartment Incentive Loan Program (SAIL) funds to be used to preserve units that are less deteriorated than those requiring “substantial rehabilitation” as defined in s. 420.503(41), F.S.
- **Section 420.507(47), F.S.:** is created to allow the FHFC to develop and administer the Florida Public Housing Authority Preservation Grant Program.
- **Section 420.5087(6)(l), F.S.:** allows use of SAIL funds for moderate rehabilitation and preservation of existing affordable units.
- **Section 420.615, F.S.:** provides that local governments may provide density bonus incentives to landowners who donate property for the purpose of assisting local governments in providing affordable housing. Donated property is subject to a determination by the local government for suitable use as affordable housing.
- **Section 420.9071 (29), F. S.:** is created to include a definition for “Assisted housing” or “Assisted housing development” meaning a rental housing development, including rental housing in a mixed use development that received or currently receives funding from any federal or state housing program.
- **Section 420.9071 (30), F. S.:** is created to include a definition for “Preservation,” meaning actions taken to keep rents in existing assisted housing affordable for income defined households, while ensuring that the property stays in good physical and financial condition.
- **Section 420.9075(3)(e), F.S.:** is created to encourage local governments to develop preservation strategies.
- **Section 420.9073 (3) and 420.9075 (7), F.S.:** proposed amendments to increase the minimum allocation of SHIP Funds for each county to \$500,000 are deleted.
- **Section 420.9075(5)(k), F.S.:** provides for funding of preconstruction preservation activities, and provides that under certain circumstances such funds shall not be considered as administrative expenses.
- **Section 1001.43 (12), F.S.:** allows school boards in areas of Critical State Concern to use surplus land for housing for teachers and other essential services personnel as defined by local affordable housing plans.
- Appropriates \$75 Million from the Local Government Housing Trust Fund to FHFC to be used in counties or municipalities that have reduced impact fees.

On April 11, 2008, a strike-all amendment was adopted with two amendments to the strike-all amendment by the Economic Expansion and Infrastructure Council, and the bill was reported favorably.

The amendment changed the following:

- **Section 125.0104(3), F.S.:** Allows Monroe County and any other county the state has designated as an area of critical concern to use one penny of an already authorized tax on hotel rooms for affordable housing purposes. The current local ordinance authorizes the tax proceeds to be used only for marketing. The tax itself is already authorized by existing local ordinance.

- **Section 196.1978, F.S.:** Adds recapture language directing that if there is a change in eligibility requirements set forth or the exemption was obtained improperly the total amount of taxes, non-ad valorem assessments, and interest for the period such exemption was effective becomes due and payable.
- **Section 420.5087(6)(c)16., F.S.:** Adds green building principles, storm resistant construction, or other elements that reduce long-term costs relating to maintenance, utilities, or insurance as criteria to be considered by FHFC in its scoring and competitive evaluation of applications for funding under the SAIL program.
- **Section 420.5095, F.S.:** is created to allow prioritization of declined or returned funds for projects aimed at providing housing for teachers and other instructional personnel employed by local school districts.
- **Section 420.628, F.S.:** is created, and qualifies children and young adults leaving foster care under statute as eligible persons for consideration for affordable housing assistance. The bill also provides guidance to the FHFC in developing and implementing strategies for establishing a suitable transition for those young-persons leaving foster care.
- **Section 420.9075(5)(c), F.S.:** is created and limits the expenditure of SHIP funds on manufactured housing to 15 percent.
- Deletes \$75 Million appropriation to FHFC.

On April 14, 2008, the Policy and Budget Council adopted these amendments. The amendments: (1) provided for the use of the local governments infrastructure tax for affordable housing; (2) changed the language for the ad valorem tax exemption for affordable housing; and (3) clarified the distribution formula for the tourist development tax.