

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: CS/SB 1040

INTRODUCER: Community Affairs Committee and Senator Bennett

SUBJECT: Affordable Housing

DATE: March 17, 2009 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Molloy	Yeatman	CA	Fav/CS
2.			JU	
3.			FT	
4.			TA	
5.			WPSC	
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The CS/SB 1040 provides limitations on the Florida Housing Finance Corporation’s access to the state allocation pool, revises certain definitions relating to the state’s affordable housing program to allow the use of State Apartment Incentive Loans for moderate rehabilitation efforts, and modifies the distribution of funds from the Local Government Housing Trust Fund by authorizing set-asides for specific purposes.

The CS provides specific assessment requirements for property receiving the low-income housing tax credit and property owned by a community land trust and used for the purpose of providing affordable housing. Additional criteria is provided to be used in determining if certain organizations are eligible for an ad valorem tax exemption when providing affordable housing.

The CS substantially amends the following sections of the Florida Statutes: 159.807, 163.3202, 196.196, 196.1978, 212.055, 420.503, 420.5087, 420.9071, 420.9072, 420.9073, 420.9075, 420.9076, 420.9079, and 1001.43. The bill creates ss. 193.018 and 420.628, F.S., and repeals s. 420.9078, F.S.

II. Present Situation:

Florida Housing Finance Corporation¹ — The Florida Housing Finance Corporation (corporation), is the state entity primarily responsible for encouraging the construction of affordable housing in Florida. The corporation was created in 1997 when the Legislature enacted chapter 97-167, Laws of Florida, to streamline implementation of affordable housing programs in Florida by reconstituting the agency as the corporation. The corporation is a public corporation housed within the Department of Community Affairs (DCA) and is a separate budget entity not subject to control, supervision, or direction by the DCA. The corporation is governed by a board of directors comprised of the Secretary of DCA who serves as an ex officio voting member, and eight members appointed by the Governor subject to confirmation by the Senate.

The corporation operates several housing programs financed with state and federal dollars, including:

- The State Apartment Incentive Loan Program (SAIL) which annually provides low-interest loans on a competitive basis to affordable housing developers;
- The Florida Homeowner Assistance Program (HAP) which includes the First Time Homebuyer Program, the Down Payment Assistance Program, the Homeownership Pool Program, and the Mortgage Credit Certificate program;
- The Florida Affordable Housing Guarantee Program which encourages lenders to finance affordable housing by issuing guarantees on financing of affordable housing developments financed with mortgage revenue bonds;
- The State Housing Initiatives Partnership (SHIP) Program which provides funds to cities and counties as an incentive to create local housing partnerships and to preserve and expand production of affordable housing; and
- The Community Workforce Housing Innovation Pilot Program (CWHIP), which awards funds on a competitive basis to promote the creation of public-private partnerships to develop, finance and build workforce housing.

Affordable housing programs are funded from documentary stamp tax revenues which are distributed to the State Housing Trust Fund and then used for the various corporation programs. The 2005 Legislature capped the rate of growth for distribution of documentary stamp tax revenues effective July 1, 2007.

SAIL Program— The SAIL program, created in s. 420.5087, F.S., authorizes the corporation to underwrite or make loans or loan guarantees if:

- The project sponsor uses tax-exempt financing for the first mortgage and at least 20 percent of the units are set aside for persons or families who meet the income eligibility requirements of s. 8 of the United States Housing Act of 1937, as amended;
- The project sponsor uses taxable financing for the first mortgage and at least 20 percent of the units are set aside for persons or families who have incomes below 50 percent of the state or local median income, whichever is higher, adjusted to family size;

¹ Formerly the Florida Housing Finance Agency

- The project sponsor uses federal low-income housing tax credits and the project meets the tenant eligibility requirements of s. 42 of the Internal Revenue Service code; or
- The project is located within a county that has an area that is, or within the previous 5 years was designated as an area of critical state concern for which the Legislature has declared its intent to provide affordable housing, and 100 percent of the units in the project are set aside for persons or families with incomes below 120 percent of the state or local median income, whichever is higher.

Funds must be reserved for commercial fishing workers and farm workers, families, the elderly, and the homeless. Projects that maintain 80 percent of their units for commercial fishing workers and farm workers, and the homeless, are eligible to receive loans at a 1 percent interest rate. All other projects are eligible for loans at a 3 percent rate. Ten percent of funds set aside to house the elderly must be reserved to provide loans for the purpose of making existing building health and preservation improvements, or sanitation repairs or improvements required by federal, state, or local law or regulation, or life safety or security-related repairs or improvements. Loans from the reserved funds may not exceed \$750,000 per housing community, and the sponsor of the housing community must commit to matching at least 5 percent of the loan amount needed to pay for the necessary repairs or improvements.

State Housing Initiatives Partnership (SHIP) Program— The SHIP program, created in part VII of chapter 420, provides funds to counties and eligible cities as an incentive for the creation of local housing partnerships, to expand the production of and preserve affordable housing, to further the housing element in a local government comprehensive plan specific to affordable housing, and to increase related employment. To be eligible to receive funding under the SHIP program, a county or an eligible city must submit a local housing assistance plan to the corporation, and within 12 months of adopting the plan, incorporate local housing incentive strategies. The local housing incentive strategies must be implemented by amending land development regulations or establishing local policies and procedures. Also, the local government must adopt an ordinance to create a local housing assistance trust fund, implement a local housing assistance plan through a local housing partnership, designate responsibility for the local housing assistance plan, and create an affordable housing advisory committee. To be eligible to participate, the governing board of a city must execute an interlocal agreement with the governing body of the county in which the city is located.

State Administration of Remaining Local Distribution Funds - s. 420.9078, F.S.—

When funds remain in the Local Government Housing Trust Fund after authorized distributions have been made, s. 420.9078, F.S., requires that the corporation distribute such funds as follows:

- Proportionately under the local housing distribution formula established in s. 420.9073, F.S., to counties and cities where a state of emergency or natural disaster has been declared by executive order, and which have an approved local housing assistance plan for repairing and replacing housing damaged as part of the emergency or natural disaster.
- If no emergency or natural disaster funding is required, then proportionately among the counties and cities who have fully expended their local housing distribution for the preceding state fiscal year, and who have an approved local housing assistance plan.

Community Land Trusts— In an effort to create permanent affordable homeownership opportunities for Florida’s workforce, local governments are donating land, or the money to purchase land, to charitable, tax exempt housing organizations known as community land trusts, which then build homes on the property. The community land trust (CLT) sells the home, but not the land, to an income-eligible buyer. The purchase price of the home is made affordable to the homebuyer, in large part because the buyer is not paying for the land. The homeowner receives a 99-year ground lease interest in the land and pays a nominal monthly fee to the community land trust for the use of the land. After the initial acquisition, resale is limited to a formula contained in the ground lease that restricts the market price of the home to ensure continuous affordability.

According to the Revenue Estimating Conference, as of 2007 there are 17 community land trusts in Florida that are operational or in the incorporation stage, and 13 more under discussion. In Monroe County, the Middle Keys Community Land Trust allows improvements to appreciate by the lesser of 3 percent per year or the rate of annual growth in median income in the Keys.

Affordable and Workforce Housing Income Requirements— Income requirements for affordable housing and workforce housing are established in ss. 420.0004 and 420.5095, F.S., respectively, as follows:

- Extremely-low-income persons: a person or family whose total annual income does not exceed 30 percent of the median annual adjusted gross income for households within the state.
- Very-low-income persons: a person or family whose total annual income does not exceed 50 percent of the median annual adjusted gross income for households within the state.
- Low-income persons: a person or family whose total annual income does not exceed 80 percent of the median annual adjusted gross income for households within the state.
- Moderate-income persons: a person or family whose total annual income is less than 120 percent of the median annual gross income for households within the state.
- Workforce housing: housing affordable to a person or family whose total annual income does not exceed 140 percent of the area median income, adjusted for household size. In areas of critical state concern, the total annual income may not exceed 150 percent of the area median income.

Charitable Organizations— Under section 501(c)(3) of the Internal Revenue Code, an organization may only be tax-exempt if it is organized and operated for exempt purposes, including charitable and religious purposes. None of the organization's earnings may benefit any private shareholder or individual, and the organization may not attempt to influence legislation as a substantial part of its activities. Charitable purposes include relief of the poor, the distressed or the underprivileged, the advancement of religion, and lessening the burdens of government.

Affordable Housing Property Exemptions— The Florida Constitution provides no exception to the just value standard for assessment of property in affordable housing programs. Under s. 193.017, F.S., in assessing property in the Low-Income Housing Tax Credit Program, neither the tax credits nor the financing generated by the tax credits may be considered income to the property, and the actual rental income from rent-restricted units may be recognized by the property appraiser. Under s. 196.1978, F.S., property that provides affordable housing for income-eligible individuals and families and owned entirely by a charitable nonprofit entity

under federal criteria, is considered property owned by an exempt entity for charitable purposes making it eligible for an ad valorem tax exemption to the extent authorized in s. 196.196, F.S. In 2007, the Legislature enacted chapter 2007-198, Laws of Florida, authorizing a county or municipality to adopt an ordinance to allow for the deferral of property taxes and non-ad valorem assessments if the owners of the property are operating, rehabilitating, or renovating affordable rental housing property. The use of the property as affordable housing must be maintained over the deferral period or the total amount of deferred assessments, taxes and interest becomes due and payable on November 1 of the year in which the use of the property was changed.

Property entitled to charitable, religious or other exemptions— Under s. 196.196, F.S., when determining if the use of the property qualifies the property for an ad valorem tax exemption, the property appraiser must consider the nature and extent of the charitable or other qualifying activity compared to other activities performed by the organization owning the property, and the availability of the property for use by other charitable or other qualifying entities. The rental of the property to other qualified entities at a charge that is equal to or less than the cost of the qualified entity having its own facility is not considered a profit-making purpose and does not affect the exempt purposes of the owning organization. Only the portions of the property used predominantly for the charitable or other qualified purposes may be exempt from ad valorem taxation.

With regard to property used for religious purposes, the property may be exempt if the entity has taken affirmative steps to prepare the property for use as a house of worship. "Affirmative steps" means environmental or land use permitting activities, creation of architectural or schematic drawings, land clearing or site preparation, construction or renovation activities, or other similar activities that demonstrate a commitment of the property to a religious use as a house of public worship.

Mobile/Manufactured Homes and Park Trailers— Section 320.8325, F.S., provides the Department of Highway Safety and Motor Vehicles with the authority to adopt rules establishing uniform standards for the installation of mobile homes, manufactured homes, and park trailers. The rules must ensure that the manufactured home or park trailer is installed on a permanent foundation that resists wind, flood, flotation, overturning, sliding, and lateral movement of the home or park trailer. These standards may only be amended by the department. For purposes of chapter 320, a manufactured home is a "mobile home fabricated on or after June 15, 1976, in an offsite manufacturing facility for installation or assembly at the building site, with each section bearing a seal certifying that it is built in compliance with the federal Manufactured Home Construction and Safety Standard Act."

Department rules governing the installation of mobile and manufactured homes, including the required use of specified anchors and tie-downs, are in chapter 15C-1 of the Florida Administrative Code.

III. **Effect of Proposed Changes:**

Section 1. Amends s. 159.807, F.S., to limit the Florida Housing Finance Corporation's access to the state allocation pool for private activity bonds permitted to be issued in the state under the Internal Revenue Code to the amount of their initial allocation under s. 159.804, F.S., and to

provide that after the initial allocation has been provided, the corporation may not receive more than 80 percent of the amount remaining in the state allocation pool on November 16th of each year.

Section 2. Creates s. 193.018, F.S., to provide for the assessment of structural improvements, condominium parcels, and cooperative parcels on land which is owned by a CLT and used to provide affordable housing. The CS defines “community land trust” as a nonprofit entity that qualifies as a charitable entity under s. 501(c)(3) of the Internal Revenue Code and which has as one of its purposes the acquisition of land to be held in perpetuity for the primary purpose of providing affordable housing.

The CS codifies in statute the responsibility of a CLT to convey structural improvements, condominium parcels, or cooperative parcels located on specific parcels of land to persons or families who qualify for affordable housing under the income limits of s. 420.0004, F.S., or for workforce housing under the income limits of s. 420.5095, F.S. The improvements or parcels are each subject to a ground lease of at least 99 years, and the ground lease contains a formula limiting the amount for which the improvement or parcel may be resold. The CLT retains the first right to purchase at the time of resale.

The CS provides that in arriving at the just valuation of structural improvements or improved parcels conveyed by a CLT, or land owned by the CLT, the property appraiser must assess based on the resale restrictions or limited uses contained in the 99-year or longer ground lease. When recorded in the official public records of the county in which the property is located, the ground lease and amendments or supplements to the lease, or a memorandum documenting the restrictions contained in the ground lease, are deemed a land use regulation during the term of the lease.

Section 3. Amends s. 196.196, F.S., to create a new subsection (5) to provide that property owned by an exempt organization qualified as charitable under s. 501(c)(3) of the Internal Revenue Code is used for a charitable purpose if the organization has taken affirmative steps to prepare the property to provide affordable housing to persons or families meeting the income restrictions for extremely-low, very-low, low, and moderate income families under s. 420.0004, F.S. “Affirmative steps” is defined as: environmental or land use permitting activities, creation of architectural plans or schematic drawings, land clearing or site preparation, construction or renovation activities, or other similar activities that demonstrate a commitment of the property to providing affordable housing.

If property granted an exemption under this subsection is transferred for purposes other than the provision of affordable housing, or the property is not actually used as affordable housing within 5 years after the exemption is granted, the property appraiser must record a tax lien against the property, and the property owner is subject to taxes otherwise due and owing for failure to use the property for the purpose for which the exemption was granted, and interest at 15 percent per annum with a 50 percent penalty of the taxes due and payable. The 5-year limitation may be extended if the property owner continues to take “affirmative steps” to develop the property for affordable housing.

Section 4. Amends s. 196.1978, F.S., to extend the affordable housing property ad valorem tax exemption to property that is held for the purpose of providing affordable housing to persons and families meeting the income restrictions in s. 159.603(7), F.S.,² and s. 420.0004, F.S.³ The property must be owned by a Florida-based limited partnership, the sole general partner of which is a not-for-profit corporation, or be owned by a nonprofit entity that is a not-for-profit corporation. The not-for-profit corporation must qualify as charitable under section 501(c)(3) of the Internal Revenue Code and in compliance with Rev. Proc. 96-32, 1996-1 C.B. 717.⁴ The bill provides that any property owned by a limited partnership which is disregarded as an entity for federal income tax purposes will be treated as if owned by its sole general partner.

Section 5. Amends s. 212.055, F.S., to provide that an expenditure to acquire land to be used for a residential housing project in which at least 30 percent of the units are affordable to specified individuals and families is an authorized use of the local infrastructure surtax if the land is owned by a local government or a special district that has entered into an interlocal agreement with the local government to provide such housing. The local government or the special district may enter into a ground lease with any entity for the construction of the residential housing project on land acquired from the expenditure of local infrastructure surtax proceeds.

Section 6. Amends s. 163.3202, F.S., to provide that certain land development regulations must maintain the existing density of specified properties if the properties are intended for residential use and are located in an unincorporated area with sufficient infrastructure in place to support the use.

Section 7. Amends s. 420.503, F.S., to provide that “moderate rehabilitation” means the repair or restoration of a dwelling unit when the value of such a repair or restoration is not more than 40 percent of the value of the dwelling unit but not less than \$10,000.

Section 8. Amends s. 420.5087, F.S., to include projects that include green building principles, storm-resistant construction, or other elements to reduce long-term maintenance costs as projects eligible to apply for and receiving consideration for funding from the SAIL program. Provides that the proceeds of SAIL loans may be used for moderate rehabilitation or preservation of affordable housing units.

Section 9. Creates s. 420.628, F.S., to direct the Florida Housing Finance Corporation, the agencies receiving funding under the State Housing Initiatives Partnership Program, local housing finance agencies, and public housing authorities to coordinate with the Department of Children and Family Services and their agents and community-based care providers to develop and implement strategies and procedures to increased affordable housing opportunities for young adults leaving the child welfare system.

² Section 159.603(7), F.S., provides that "eligible persons" means one or more natural persons or a family, determined by the housing finance authority to be of low, moderate, or middle income. The determination does not preclude any person or family earning up to 150 percent of the state or county median income from participating in a housing financing authority program. Persons 65 years of age or older are eligible regardless of income.

³ Income limits for extremely-low, very-low, low, and moderate-income persons or families are defined in s. 420.0004, F.S..

⁴ Revenue Procedure Low-Income Housing Guidelines as published by the Internal Revenue Service to provide guidance on qualifying for the 501(c)(3) tax exemption for organizations that provide low-income housing.

Section 10. Amends s. 420.9071, F.S., to:

- Amend the definition of "annual gross income" to provide that "annual gross income" may be defined by the standard practices used in the lending industry as detailed in the local housing assistance plan and approved by the Florida Housing Finance Corporation.
- Define "assisted housing" and "assisted housing development" as 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.
- Amend the definition of "eligible housing" to include manufactured housing installed in accordance with the installation standards for mobile and manufactured homes contained in rules of the Department of Highway Safety and Motor Vehicles.
- Amend the definition of "local housing incentive strategies" to allow the local affordable housing advisory committees to propose local housing incentive strategies in the triennial evaluation of how local governments are implementing affordable housing.
- Define "preservation" as efforts taken to keep rents in existing assisted housing or assisted housing development affordable for income-qualified persons while ensuring that the property stays in good physical and financial condition for an extended period.
- Amend the definition of "recaptured funds" to provide that local or grant funds for owner-occupied housing which may be recouped by a county or to city include those funds which were not used to provide assistance and those funds which were part of a defaulted loan or grant award.

Section 11. Amends s. 420.9072, F.S., to delete a cross-reference to s. 420.9078, F.S., which is being repealed in the bill. Counties and eligible cities are authorized to use SHIP dollars to provide relocation grants to persons who have been evicted from rental housing due to the property being in foreclosure. The one-time relocation grant, in an amount not to exceed \$5,000, may be granted to persons who meet the income eligibility requirements of the SHIP program.

Section 12. Amends s. 420.9073, F.S., relating to Local Housing Distributions, to:

- Allow the corporation to distribute Local Government Housing Trust Fund dollars on a quarterly or more frequent basis, subject to the availability of funds.
- Allow the corporation to withhold up to \$5 million in funds distributed from the Local Government Housing Trust Fund to provide additional funding to counties and cities in a state of emergency.
- Allow the corporation to withhold up to \$5 million in funds distributed from the Local Government Housing Trust Fund to provide funding to counties and cities to purchase properties subject to a SHIP lien on which foreclosure proceedings have been instituted.
- Clarify that counties and cities receiving SHIP funds must expend those funds in accordance with statutory requirements, corporation rules, and the local housing assistance plan.

Section 13. Amends s. 420.9075, F.S., relating to Local Housing Assistance Plans, to provide that:

- In the development and implementation of local housing assistance plans used to make affordable housing available to qualified persons, counties and cities must include persons with disabilities as persons with special housing needs.
- The local housing assistance plans of counties and cities can include strategies to assist persons and households with annual incomes of not more than 140 percent of the area median income.
- Local housing assistance plans must describe initiatives that encourage or require innovative design, green building principles, storm-resistant construction, or other elements that reduce long-term costs relating to maintenance, utilities, or insurance.
- Counties and cities are encouraged to develop local housing assistance plans that provide funding for preservation of assisted housing or assisted housing developments.
- Not more than 25 percent of funds made available in each county and eligible city may be used for manufactured housing.
- Monroe County's exemption from income-restrictions relating to the use of set-aside funds in the local government assistance trust fund is extended from July 1, 2008 to July 1, 2013, so that awards may be made to residents with incomes no higher than 120 percent of the area median income, and applied retroactively.
- SHIP funds may be used for preconstruction activities. When preconstruction due diligence activities prove that preservation is not feasible, the costs for those activities are program costs and not administrative costs.
- Counties and cities may award construction, rehabilitation, or repair grants as part of disaster recovery, emergency repairs, or to remedy access or health and safety issues.
- Program funds expended for an ineligible activity must be repaid to the Local Housing Assistance Trust Fund and SHIP funds may not be used

Section 14. Amends s. 420.9076, F.S., relating to the adoption of affordable housing incentive strategies, to allow a local governing body that also serves as a local planning agency to appoint a designee to the local affordable housing advisory committee. The committee's evaluation of the local housing assistance plan and its report on the evaluation must be submitted to the corporation.

Section 15. Repeals s. 420.9078, F.S., providing statutory requirements for the Florida Housing Finance Corporation's distribution of funds, if any, which remain in the Local Government Housing Assistance Trust Fund, after all appropriations have been made.

Section 16. Amends s. 420.9079, F.S., to correct cross-references.

Section 17. Amends s. 1001.43, F.S., to expand the purposes for which a district school board in an area of critical state concern may use specified properties and surplus lands to include affordable housing for essential services personnel, as defined by local affordable housing eligibility requirements.

Section 18. Provides that the act shall take effect July 1, 2009.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The CS reduces the authority that municipalities and counties have to raise revenues in the aggregate but the level of reduction is unclear. If the fiscal impact of the bill rises above the level determined to be "insignificant,"⁵ the CS must pass with 2/3 vote of the membership of each house of the Legislature, as required in s. 18, Art. VII, State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Florida residents may see an increase in affordable housing properties and units available for sale or rental under the provisions of the CS. Developers and providers of affordable housing may see a reduction in ad valorem taxes from the provisions of the CS.

C. Government Sector Impact:

On March 14, 2009, the Revenue Estimating Conference met to determine the fiscal impact of SB 1040 and determined that provisions relating to community land trusts, charitable organizations that provide affordable housing, and the ad valorem exemption provided for certain limited partnerships needed closer review. However, in 2007 and 2008, the conference adopted the following impacts for similar proposals:

- (\$400,000) impact to local government relating to property owned by an exempt entity that has taken affirmative steps to prepare the property to provide affordable housing. (2/15/2008)
- Indeterminate negative impact relating to community land trust property used to provide affordable housing. (2/29/2008)
- Low impact of (\$1.9 million) in the first year to (\$2.2 million) in the fifth year for ad valorem tax exemptions for limited partnerships (4/21/2007). The estimated applied to taxes levied by counties, municipalities, and school districts.

⁵ Defined as a fiscal impact of 10 cents or less per capita per year. Florida's estimated population on April 1, 2007, was 18.68 million people so a fiscal impact of more than \$1.9 million in the aggregate is a significant fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on March 17, 2009:

The CS removes the following sections of the original bill:

- Section 1 relating to the use the tourist development tax for affordable housing.
- Section 7 repealing the transfer of service charges to the General Revenue Fund.
- Section 9 creating the Florida Public Housing Authority Preservation Grant Program.
- Section 11 relating to the Community Workforce Housing Innovative Pilot Program.
- Section 12 relating to the affordable housing land donation density bonus.

The CS provides that counties and eligible cities may use SHIP dollars to provide one-time relocation grants to persons evicted from rental property when that property is in foreclosure, and upon other conditions and income restrictions. Certain land development regulations must maintain existing density on specified properties under certain circumstances.

B. Amendments:

None.