

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: PCS/SB 262 (429046)

INTRODUCER: Community Affairs Committee

SUBJECT: Affordable Housing

DATE: March 11, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	Pre-meeting
2.			TA	
3.			RC	
4.				
5.				
6.				

I. Summary:

This proposed committee substitute (PCS) removes the statutory limitation on documentary stamp tax revenue that goes into the State and Local Government Housing Trust Funds and restricts the use of affordable housing funds for new construction activities for a certain period. The PCS also provides targeted assistance for persons with special needs and requires multi-family housing funds to be administered to provide for individuals most in need of housing.

The PCS allows the Florida Housing and Finance Corporation (FHFC) to receive federal funds for which no corresponding program has been created in statute and empowers local housing authorities to invest surplus funds.

This PCS substantially amends the following sections of the Florida Statutes: 159.608, 163.3177, 163.31771, 201.15, 212.08, 215.5586, 420.0003, 420.0004, 420.503, 420.507, and 420.5087.

II. Present Situation:

Florida Housing Finance Corporation

The Florida Housing Finance Corporation (FHFC),¹ is a state entity primarily responsible for encouraging the construction and reconstruction of new and rehabilitated affordable housing in Florida.² It was created in 1997, when the Legislature enacted chapter 97-167, Laws of Florida, to streamline implementation of affordable housing programs by reconstituting the agency as a

¹ Formerly the Florida Housing Finance Agency

² Housing is determined to be affordable when a family is spending no more than 30 percent of its total income on housing. See Florida Housing Finance Corporation Handbook, *Overview of Florida Housing Finance Corporation's Mission and Programs*, at 3 (Sept. 2009) (on file with the Senate Committee on Community Affairs).

corporation. The FHFC is a public corporation housed within the Department of Community Affairs (DCA), but is a separate budget entity not subject to the control, supervision, or direction of the DCA. Instead, it is governed by a nine member 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;³
- 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.

The FHFC receives funding for its affordable housing programs from documentary stamp tax revenues which are distributed to the State Housing Trust Fund and the Local Government Housing Trust Fund (more information provided below).⁴ Pursuant to s. 420.507, F.S., the FHFC is also authorized to receive federal funding in connection with the corporation's programs directly from the Federal Government.⁵

Documentary Stamp Tax

The documentary stamp tax imposes an excise tax on deeds or other documents that convert an interest in Florida real property. The current tax rate is 70 cents on each \$100 of consideration for deeds, instruments, or writings whereby lands, tenements, or other real property or interest that are granted, assigned, transferred, conveyed or vested in a purchaser.⁶ Section 201.15, F.S., provides for the distribution of documentary stamp taxes, which are primarily used to fund various land and water conservation, preservation, and maintenance trust funds and certain transportation trust funds.⁷ In 1992, the William E. Sadowski Act created a dedicated source of revenue from documentary stamp tax revenues for affordable housing. This is generated from:

³ Under current law, low interest mortgage loans provided under the SAIL Program are only available for qualifying farm workers, commercial fishing workers, the elderly, and the homeless. *See* s. 420.507(22), F.S.

⁴ Sections 201.15 (9) and (10), F.S.

⁵ *See* ss. 420.507 (33), and 159.608, F.S.

⁶ Section 201.02 (1), F.S.

⁷ Section 201.15(1), F.S.

- A 10-cent increase to the documentary stamp tax on real estate transfers; and
- A re-allocation of 10 cents of existing documentary stamp tax revenues from general revenue to affordable housing trust funds.⁸

According to the FHFC, “30 percent of these revenues flow into the State Housing Trust Fund and 70 percent flow into the Local Government Housing Trust Fund”.⁹ In 2005, the Legislature capped the rate of growth for distribution of documentary stamp tax revenues into these trust funds to \$243 million per year.¹⁰ In the 2009-2010 FY, the Legislature appropriated \$31.1 million to the FHFC.¹¹

State Housing Strategy Act

The State Housing Strategy Act, located in Part I, of ch. 420, F.S., was created by the Legislature in 1992 to guarantee adequate affordable housing for Florida residents.¹² Pursuant to s. 420.0003, F.S., the Department of Community Affairs and the FHFC annually coordinate with the Shimberg Center for Affordable Housing at the University of Florida¹³ to develop and maintain statewide data on affordable housing needs for specific populations.¹⁴ These studies are then used to review and evaluate existing affordable housing accommodations to ensure that they are consistent with current need assessments and to recommend any improvements or plan modifications.¹⁵

The Florida Housing Data Clearinghouse (FHDC) within the Shimberg Center provides specialized affordable housing data for special needs populations which include farm workers, individuals with disabilities, homeless people, and extremely low income households.¹⁶ Under current law, ss. 420.0003 (3) and (4), F.S., do not specifically require affordable housing studies for persons with disabilities, youth aging out of foster care, disabled veterans and survivors of domestic violence; nor are multifamily rental housing funds required to be administered to address the needs of extremely low income households. According to the Affordable Housing Commission report conducted in 2004, 637,394 households were classified as extremely low income households: 226,661 of which were multi-family rental housing units, and 181,145 having at least one person with a disability.¹⁷

⁸ Florida Housing Finance Corporation Handbook, *Overview of Florida Housing Finance Corporation's Mission and Programs*, at 4 (Sept. 2009) (on file with the Senate Committee on Community Affairs).

⁹ *Id.*, see also ss. 201.15(9) and (10), F.S.

¹⁰ Senate Bill 1110 (2005).

¹¹ Florida Housing Finance Corporation Handbook, *Overview of Florida Housing Finance Corporation's Mission and Programs*, at 13 (Sept. 2009) (on file with the Senate Committee on Community Affairs).

¹² Section 420.0003, F.S.

¹³ The Shimberg Center was established at the University of Florida in 1988 to “facilitate safe, decent and affordable housing throughout the state of Florida” and was named after “Jim Shimberg Sr.”, a Tampa homebuilder dedicated to affordable housing. The Center’s Florida Housing Data Clearinghouse provides public information on Florida housing needs, programs and demographics. For more information visit: <http://www.shimberg.ufl.edu/aboutUs2.html> (last visited on March 11, 2010).

¹⁴ Section 420.0003(4)(c), F.S.

¹⁵ *Id.*

¹⁶ Florida Housing Data Clearing House (FHDC) Shimberg Center for Affordable Housing, *Databases for Farm workers and Special Needs Populations*, available online at http://flhousingdata.shimberg.ufl.edu/SpecNeed_introduction.html (last visited on March 12, 2010).

¹⁷ Affordable Housing Study Commission, *Final Report 2004* (page 12-13, Table 2) available online at <http://www.floridahousing.org/NR/rdonlyres/B43F4998-A49B-4171-B564-4F257C1D1887/0/2004FINALREPORT.pdf> (last visited on March 12, 2010).

Local Government Investment Policies

Section 218.415, F.S., provides the statutory guidelines for local government investment policies for excess public funds,¹⁸ requiring that such policies be structured to provide objectives for the safety of capital, liquidity of funds, and investment returns.¹⁹ These investment policies must also specify performance measures that are commensurate with the nature and size of all the public funds in its custody.²⁰ Sections 218.415 (16) and (17), F.S., contain lists of authorized trust funds and accounts that local government units can invest and reinvest surplus public funds into by resolution.²¹

The Florida Security for Public Deposits Act, located in ch. 280, F.S., establishes certain criteria that banks and financial institutions must meet to be considered a “qualified public depository” that is eligible to receive local government investments.²² Section 280.03(3), F.S., provides exemptions to this restriction for certain kinds of investments, including “public deposits which are fully secured under federal regulations”.²³

Some local housing finance authorities have opined that state restrictions pertaining to qualified public depositories do not apply to investments that are fully insured by the Federal Deposit Insurance Corporation (FDIC); however, other parties have interpreted the exemptions in s. 280.03(3)(e), F.S., not to include FDIC insured accounts.

Local Government Comprehensive Plans

The Local Government Comprehensive Planning and Land Development Regulation Act,²⁴ in Part II, of ch. 163, F.S., requires all counties and municipalities to adopt Local Government Comprehensive Plans that prescribe the future “economic, social, physical, environmental, and fiscal development of the area”.²⁵ These comprehensive plans must include nine mandatory “elements” that address:

- Capital improvements,
- Future land use,
- Traffic circulation,
- Sanitary sewer, solid waste, drainage, potable water, and natural groundwater recharge,
- Conservation,
- Recreation and open space,
- Housing,
- Coastal management, and

¹⁸ In lieu of a written investment policy, local governments also have the option to meet alternative investment guidelines provided under s. 218.415(17), F.S., *see* s. 218.415(1), F.S.

¹⁹ Section 218.415(2), F.S. (Note that this section also states that “[s]uch policies shall be structured to place the highest priority on the safety of principal and the liquidity of funds”.)

²⁰ Section 218.415(3), F.S.

²¹ *See* ss. 218.415(16) (a) – (i), F.S., *see also* ss. 218.415(17) (a) – (d), F.S.

²² Section 280.02(26), F.S.

²³ Section 280.03(3)(e), F.S.

²⁴ Also known as “The Growth Management Act”

²⁵ Section 163.3177, F.S.

- Intergovernmental coordination.²⁶

The legislative policy behind comprehensive planning is to control the flow of development to ensure that public services and facilities continue to be adequate and sufficient.²⁷ According to planning officials within the Florida Department of Community Affairs, the five main areas of statewide interest are: school coordination, urban sprawl, urban infill and redevelopment, water supply planning, and rural land stewardship.²⁸

III. Effect of Proposed Changes:

Section 1 authorizes local housing finance authorities to invest and reinvest surplus funds in interest-bearing time deposits or savings accounts that are fully insured by the Federal Deposit Insurance Corporation (FDIC), regardless of whether the bank or financial institution is a qualified public depository pursuant to s. 280.02, F.S.

Section 2 amends s. 163.3177(6)(f), F.S., to require local government comprehensive plans to include information on senior affordable housing, and to direct local governments to dispose real property conveyed to them for affordable housing pursuant to s.125.379 or s.166.0451, F.S.

Section 3 removes the statutory cap on documentary stamp tax revenue that is distributed into the State and Local Housing Trust Funds. This is accomplished by amending ss. 201.15(9) and (10), F.S., so that “seven and fifty-three hundredths” (7.53 %), of net documentary stamp tax collections are split 50% to the State Housing Trust Fund and 50% to the Local Government Trust Fund, and “eight and sixty-six hundredths” (8.66%) of the net collections are split 12.5% to the State Housing Trust Fund and 87.5% to the Local Government Housing Trust Fund.

Section 4 amends s. 420.0003, F.S., of the State Housing Strategy Act to require housing fund distributions for multifamily rental housing to be administered to provide for individuals most in need of housing and to require annual affordable housing evaluations to specifically address persons with special needs.

Section 5 provides definitions under ss. 420.0004(7) and (13), F.S., for “disabling condition” and “person with special needs”.

Section 6 amends s. 420.507, F.S., to extend the availability of low interest mortgage loans under the SAIL Program to include projects that set aside units for persons with special needs. This section also grants the FHFC with the authority to receive federal funding for which no corresponding program has been created in statute and to establish selection criteria for such funds by request for proposals or other competitive solicitation.

²⁶ See ss.163.3177 (3)(a) and (6)(a) – (h), F.S.

²⁷ Roth, Cari L. *Transportation Concurrency in Dense Urban Land Use Areas after Passage of the Community Renewal Act of 2009*, 83 Fla. B.J. 29, 29 (October 2009).

²⁸ Florida Department of Community Affairs, *Florida Planning Officials Basic Training: The Comprehensive Plan* (power point presentation, slide 14) available online at <http://www.dca.state.fl.us/FDCP/DCP/compplanning/Files/PlanningOfficialsTraining.pdf> (last visited on March 12, 2010).

Section 7 amends s. 420.5087, F.S., to include persons with special needs as a qualified tenant group for specified purposes of the SAIL Program, limiting the reservation of funds for this group to no more than ten percent of the funds available at that time.

Sections 8-11 amend current statutes to conform to cross- references provided in this PCS.

Section 12 prohibits the use of affordable housing dollars for financing or assisting new construction until July 1, 2011. These affordable housing dollars include funds from the State Housing Trust Fund or the Local Government Housing Trust Fund that are appropriated for the State Apartment Incentives Loan (SAIL) Program, Florida Homeownership Assistance Program (FHAP), Community Workforce Housing Innovation Pilot (CWHIP) Program, and the State Housing Initiatives Partnership (SHIP) Program.

The PCS expressly states that nothing in this section shall restrict the use of funds to assist with the purchase of newly constructed homes that were completed prior to December 31, 2009, or the acquisition and rehabilitation of apartments that received their initial certificate of occupancy prior to December 31, 1995.

Section 13 states that this bill shall take effect July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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:

The one year restriction on affordable housing funds for the finance or assistance of new construction would temporarily affect entities that build, construct, or finance affordable housing units within the state.

C. Government Sector Impact:

The Revenue Estimating Conference has determined that the removal of the statutory limitation on documentary stamp tax revenue distributions into the State Housing Trust Fund and the Local Government Housing Trust Fund will have no fiscal impact on the current fiscal year. However, based on a four-year outlook, there is an estimated \$21.4 million annualized negative fiscal impact to recurring general revenue and an annualized positive recurring impact in the same amount to the state housing trust funds.²⁹

This PCS authorizes the FHFC to administer programs receiving federal funding for which no corresponding program has been previously created by statute and establish selection criteria for such funds by request for proposals or other competitive solicitation.

The PCS also empowers local housing authorities to invest and reinvest surplus funds into interest-bearing time deposits or savings accounts that are fully insured by the Federal Deposit Insurance Corporation (FDIC), regardless of whether the bank or financial institution is a qualified public depository pursuant to s. 280.02, F.S.

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.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²⁹ Revenue Estimating Conference, *Fiscal Impact on HB 665: Removal of the Housing Trust Fund Distribution Cap* (Feb. 10, 2010) (on file with the Senate Committee on Community Affairs) (HB 665 is the House companion bill to Senate PCS 262).