

**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.)

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Prepared By: The Professional Staff of the Finance and Tax Committee

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BILL: CS/CS/SB 262

INTRODUCER: Finance and Tax Committee, Community Affairs Committee and Senators Bennett and Altman

SUBJECT: Affordable Housing

DATE: April 6, 2010

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	<b>Fav/CS</b>
2.	Johansen	McKee	FT	<b>Fav/CS</b>
3.			TA	
4.			RC	
5.				
6.				

**Please see Section VIII. for Additional Information:**

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|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="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:**

This bill removes the statutory limitation on documentary stamp tax revenues that go 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 bill 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 bill 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. The bill clarifies the term “domicile” and the phrase “substantial experience” as they relate to developers and general contractors in competitive affordable housing programs. Finally, the bill authorizes an inspector general position within the FHFC and deletes the requirement that the inspector general of DCA serve that function on behalf of the FHFC.

The Revenue Estimating Conference concluded that the bill will not impact state funds in fiscal year 2010-11. However, based on a four-year outlook, there is an estimated negative \$7.1 million

impact on recurring general revenue receipts and a positive recurring impact in the same amount on distributions to the housing trust funds.

This bill substantially amends the following sections of the Florida Statutes: 20.055, 159.608, 163.3177, 163.31771, 201.15, 212.08, 215.5586, 420.0003, 420.0004, 420.0006, 420.503, 420.506, 420.507, and 420.5087.

## II. Present Situation:

### Agency Inspectors General

Section 20.055, F.S., requires that each state agency<sup>1</sup> created in the organizational structure of state government have an inspector general office contained within the agency. The office is created to provide a focal point of accountability efforts within the agency. The Florida Housing Finance Corporation is not deemed to be a “state agency” for the purposes of the inspector general section. Instead, the inspector general of the Department of Community Affairs performs the inspector general function for the Florida Housing Finance Corporation

### Florida Housing Finance Corporation

The Florida Housing Finance Corporation (FHFC),<sup>2</sup> is a state entity primarily responsible for encouraging the construction and reconstruction of new and rehabilitated affordable housing in Florida.<sup>3</sup> 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 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;<sup>4</sup>
- 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;

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<sup>1</sup> For purposes of this section, the Executive Office of the Governor, the Department of Military Affairs, the Fish and Wildlife Conservation Commission, the Office of Insurance Regulation, the Office of Financial Regulation, the Public Service Commission, the Board of Governors of the State University System, and the state courts system are considered “state agencies,” in addition to the departments created in Ch. 20, F.S.

<sup>2</sup> Formerly the Florida Housing Finance Agency

<sup>3</sup> 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).

<sup>4</sup> 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.

- 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).<sup>5</sup> 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.<sup>6</sup>

### **Documentary Stamp Tax**

The documentary stamp tax imposes an excise tax on deeds or other documents that convey 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.<sup>7</sup> 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.<sup>8</sup> In 1992, the William E. Sadowski Act created a dedicated source of revenue from documentary stamp tax revenues for affordable housing. This was generated from:

- Additional revenues from a 10-cent increase in the documentary stamp tax rate imposed on real estate transfers; and
- Based on the additional documentary stamp tax revenues, a new distribution to the affordable housing trust funds beginning in FY 1995-96.<sup>9</sup>

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".<sup>10</sup> 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.<sup>11</sup> In the 2009-2010 FY, the Legislature appropriated \$31.1 million to the FHFC.<sup>12</sup>

<sup>5</sup> Sections 201.15 (9) and (10), F.S.

<sup>6</sup> See ss. 420.507 (33), and 159.608, F.S.

<sup>7</sup> Section 201.02 (1), F.S.

<sup>8</sup> Section 201.15(1), F.S.

<sup>9</sup> 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).

<sup>10</sup> *Id.*, see also ss. 201.15(9) and (10), F.S.

<sup>11</sup> Senate Bill 1110 (2005).

<sup>12</sup> 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).

**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.<sup>13</sup> 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 Florida<sup>14</sup> to develop and maintain statewide data on affordable housing needs for specific populations.<sup>15</sup> 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.<sup>16</sup>

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.<sup>17</sup> 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.<sup>18</sup>

**Local Government Investment Policies**

Section 218.415, F.S., provides the statutory guidelines for local government investment policies for excess public funds,<sup>19</sup> requiring that such policies be structured to provide objectives for the safety of capital, liquidity of funds, and investment returns.<sup>20</sup> These investment policies must also specify performance measures that are commensurate with the nature and size of all the public funds in its custody.<sup>21</sup> 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.<sup>22</sup>

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<sup>13</sup> Section 420.0003, F.S.

<sup>14</sup> 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).

<sup>15</sup> Section 420.0003(4)(c), F.S.

<sup>16</sup> *Id.*

<sup>17</sup> 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](http://flhousingdata.shimberg.ufl.edu/SpecNeed_introduction.html) (last visited on March 12, 2010).

<sup>18</sup> 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).

<sup>19</sup> 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.

<sup>20</sup> 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”.)

<sup>21</sup> Section 218.415(3), F.S.

<sup>22</sup> *See* ss. 218.415(16) (a) – (i), F.S., *see also* ss. 218.415(17) (a) – (d), F.S.

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.<sup>23</sup> 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”.<sup>24</sup>

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,<sup>25</sup> 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”.<sup>26</sup> 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
- Intergovernmental coordination.<sup>27</sup>

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.<sup>28</sup> 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.<sup>29</sup>

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<sup>23</sup> Section 280.02(26), F.S.

<sup>24</sup> Section 280.03(3)(e), F.S.

<sup>25</sup> Also known as “The Growth Management Act”

<sup>26</sup> Section 163.3177, F.S.

<sup>27</sup> See ss.163.3177 (3)(a) and (6)(a) – (h), F.S.

<sup>28</sup> 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).

<sup>29</sup> 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).

### III. Effect of Proposed Changes:

**Section 1** amends s. 20.055, F.S., the governing statute for agency inspector generals, and deems the FHFC to be a state agency that purpose. The board of directors of the FHFC is deemed to be the “agency head”, and this grants the board broad authority to appoint or remove the inspector general of the FHFC. The requirement for each inspector general to produce a summary report of their activities following the close of the state fiscal year was changed to make the report due after the close of the agency’s fiscal year; this change will accommodate the FHFC’s fiscal year, which is the calendar year, rather than the state fiscal year.

**Section 2** 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 3** 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 4** 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 5** 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 6** provides definitions under ss. 420.0004(7) and (13), F.S., for “disabling condition” and “person with special needs”.

**Section 7** amends s. 420.0006, F.S., to remove an obsolete cross-reference and to delete the requirement that the inspector general of DCA perform the inspector general function for the FHFC.

**Section 8** amends s. 420.056, F.S., to authorize the executive director of the FHFC to appoint or remove an inspector general with the “advice and consent of the corporation’s board of directors.”

**Section 9** 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 grants the FHFC 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. The section also clarifies the term “domicile” and

the phrase “substantial experience” as they relate to developers and general contractors in competitive affordable housing programs.

**Section 10** 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. This section also conforms the usage of the term “domicile” and the phrase “substantial experience” to be consistent with the clarifications made in Section 9 of the bill.

**Sections 11-14** amend current statutes to conform to cross- references provided in the bill.

**Section 15** 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 bill 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 16** provides that the bill will 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 could 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 state funds in fiscal year 2010-11. However, based on a four-year outlook, there is an estimated negative \$7.1 million impact on recurring general revenue receipts and an positive recurring impact in the same amount on the state housing trust funds.<sup>30</sup>

This bill 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 bill 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.)

**CS by Finance and Tax on April 6, 2010:**

- Authorizes an inspector general position within the FHFC.
- Deletes the requirement that the inspector general of DCA serve that function on behalf of the FHFC.
- Clarifies the term “domicile” and the phrase “substantial experience” as they relate to developers and general contractors in competitive affordable housing programs.

**CS by Community Affairs on March 17, 2010:**

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<sup>30</sup> Revenue Estimating Conference, *Fiscal Impact for CS/SB 262, Removal of the Housing Trust Fund Distribution Cap*, dated March 22, 2010.



- Removes the statutory limitation on documentary stamp tax revenues that go into the State and Local Government Housing Trust Funds.
- Restricts the use of affordable housing funds for new construction activities until July 1, 2011.
- 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.
- Allows the Florida Housing and Finance Corporation (FHFC) to receive federal funds for which no corresponding program has been created in statute.
- Empowers local housing authorities to invest surplus funds.

B. Amendments:

None.