

- The bill provides no impact to general revenue in the Fiscal Year 2010-11. There is a recurring negative impact to General Revenue of \$21.4 million in Fiscal Year 2013-14.
- The bill has an effective date of July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Distribution of Documentary Stamp Taxes

Present Situation

Section 201.15, F.S., provides for the distribution of documentary stamp taxes. The taxes are primarily used to fund varied land and water conservation, preservation, and maintenance, as well as certain transportation programs. The distributions to the State and Local Government Housing Trust Funds are limited to a percentage of the collected documentary stamp taxes or \$243 million, whichever is less.

Effect of the Bill

The bill removes the statutory limitations on the amount of documentary stamp revenue that goes into the State Housing Trust Fund and the Local Government Housing Trust Fund. The bill accomplishes this by:

- Amending subsection 201.15(9), F.S., by striking the language that provides that the money to be distributed to the State Treasury to the credit of the State Housing Trust Fund for certain purposes will be the lesser of 7.53 percent or \$107 million and replaces it with "seven and fifty-three hundredths" percent.
- Amending subsection 201.15(10), F.S., by striking the language that provides that the money to be distributed to the State Treasury to the credit of the State Housing Trust Fund for certain purposes will be the lesser of 8.66 percent or \$136 million and replaces it with "eight and sixty-six hundredths" percent.

FHFC asserts that removal of the statutory limitations on the amount of documentary stamp revenue that goes into the trust funds would increase the amount of funds that could be allocated to FHFC for its various affordable housing programs.

The caps on the above trust fund distributions are eliminated, so that 7.53% of net documentary stamp tax collections are split 50% to the State Housing Trust Fund and 50% to the Local Government Housing Trust

fund, and 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.

EDR's consensus estimate found that there is no impact to cash in the current fiscal year. However, based on a four-year outlook there is an annualized negative impact to recurring general revenue of \$21.4 million and an annualized positive recurring impact to the housing trust funds in the same amount.

Repeal of section 8 of chapter 2009-131, Laws of Florida

Current Situation

Section 201.15, F.S., provides that all taxes collected under this chapter are subject to the service charge imposed in s. 215.20(1), F.S. In addition, prior to distribution under this section, the Department of Revenue deducts the amounts necessary to pay the costs of the collection and enforcement of the tax levied.

Section 8 of chapter 2009-131, L.O.F., amended s. 201.15, F.S., by adding language that provided for all costs of collection and enforcement of the tax and the service charge to be available and transferred to the extent necessary to pay debt service and any other amounts payable with respect to bonds authorized before July 1, 2009.

This chapter of law also created subsection 201.15(16), F.S., which provides that, if amounts necessary to pay debt service or any other amounts payable with respect to Preservation 2000 bonds, Florida Forever bonds, or Everglades Restoration bonds authorized before July 1, 2009, exceed the amounts distributable pursuant to subsection 201.15(1), F.S., all moneys, distributable pursuant to this section, are available for such obligations and transferred in the amounts necessary to pay such obligations when due. Those amounts distributable pursuant to subsection 201.15(2), (3), (4), and (5), and paragraphs (9)(a) and (10)(a), F.S., are not available to pay such obligations to the extent that such moneys are necessary to pay debt service on bonds secured by revenues pursuant to those provisions.

Effect of the Bill

The bill would repeal Section 8 of chapter 2009-131, L.O.F., retroactively to June 30, 2009, which predates its effective date of July 1, 2009. The purpose of this retroactive repeal is to eliminate a conflicting version of s. 201.15, F.S., that was included in SB 2430 (Relating to Taxation of Documents) from 2009. This version provides certain distribution guidelines for tax collections after subtracting costs and the service charge, and refers to bonds authorized before July 1, 2009. SB 2430 was signed into law by the Governor on June 10, 2009, and became ch. 2009-131, L.O.F.

The version that statutory revision included in the body of s. 201.15, F.S., provides different distribution guidelines for tax collections after subtracting costs and the service charge. This version of s. 201.15, F.S., was included in SB 1750 (Relating to Disposition of Tax Revenues) from 2009, and refers to bonds authorized before January 1, 2010. SB 1750 was signed into law by the Governor on May 27, 2009, and became ch. 2009-68, L.O.F.

State Housing Strategy

Current Situation

Currently under ch. 420, F.S., the only existing set-aside or prioritization requirements for affordable housing are for commercial fishing workers, farm-workers, elderly, and homeless. Current law does not specifically address affordable housing for persons with disabilities, youth aging out of foster care, disabled veterans and survivors of domestic violence who are groups at great risk of becoming homeless.

Effect of the bill

The bill revises the state housing strategy in s. 420.003, F.S., to provide targeted assistance for persons with special needs and includes an analysis of persons with special needs in the strategy's periodic review and report and provides for the distribution of housing funds for multifamily rental housing to be administered to address the housing needs of persons most in need of housing. Specifically, the bill:

- Includes persons with special needs as a tenant group for specified purposes of the State Apartment Incentive Loan (SAIL) Program.

- Extends low interest mortgage loans for the SAIL Program to sponsors of projects who set aside units for persons with special needs.
- Establishes a maximum threshold of ten percent of the SAIL funds available at that time to be used for persons with special needs.
- Adds projects that reserve units for persons with special needs to the scoring system for evaluation and competitive ranking of applications submitted in SAIL Program.

The bill creates two new definitions to enact the newly established state housing strategies.

- “*Disabling Condition*” means a diagnosable substance abuse disorder, serious mental illness, development disability, or chronic physical illness or disability, or the co-occurrence of two or more of these conditions, and a determination that the condition is:
 - Expected to be of long-continued and indefinite duration;
 - Not expected to impair the ability of the person with special needs to live independently with appropriate supports.
- “*Person with special needs*” means an adult person requiring independent living services in order to maintain housing or to develop independent living skills. This individual must also have a disabling condition; be a young adult existing foster care; a survivor of domestic violence; or a person receiving benefits under Social Security Disability Insurance (SSDI) program, Supplemental Social Security (SSI) program, or veterans’ disability benefit.

The bill amends s. 163.3177, F.S., and requires local comprehensive plans to include affordable housing for seniors as a part of their housing element in counties with a population of more than 20% of persons 60 years of age and older and a total population of over 100,000 persons.

Powers conferred on the Florida Housing Finance Corporation

Current Situation

Sections 159.608 and 420.507, F.S., empower the FHFC with specified powers necessary or convenient to carry out and effectuate the purposes for the provision of affordable housing. Among these powers the FHFC is able to receive federal funding in connection with the corporation's programs directly from the Federal Government.

Section 218.415, F.S., provides guidelines for investment activity by local government units. It requires investment policies to be structured to place the highest priority on the safety of principal and liquidity of funds. It emphasizes that the optimization of investment returns is secondary to the requirements for safety and liquidity. Each unit of local government is required to adopt policies that are commensurate with the nature and size of the public funds within its custody.

Effect of the bill

The bill creates s. 159.608(11), F.S., authorizing the FHFC to invest and reinvest surplus funds in accordance with s. 218.415, F.S.

However, in addition to the investments expressly authorized in statute¹, the FHFC is empowered to invest 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 in which the deposit or investment is made is a qualified public depository as defined in s. 280.02, F.S.

State restrictions, pertaining to “qualified public depositories” do not apply to some investments, including “public deposits which are fully secured under federal regulations”² Legal counsel for some local housing finance authorities have opined that this waiver includes investments that are fully insured by the FDIC. However, proponents of the countervailing view have interpreted the language so that it does not include FDIC insured accounts. An auditor has suggested that a clarification would be beneficial.

¹ ss. 218.415(16)(a)-(g) and (17)(a)-(d)

² 280.03(3)(e), F.S.].

This subsection contains explicit intent language to structure this empowerment as supplementary authority and to avoid interpretation as a limitation upon any powers of the FHFC.

The bill also creates s. 420.507(33), F.S., establishing the authority of 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. This expands the ability of the FHFC to expend federal housing relief funds in an expedient and efficient manner.

The SAIL Program annually provides low interest loans on a competitive basis to affordable housing developers. The bill removes domicile of the developer and general contractor, as provided in s. 420.507(47) as criteria to be considered by FHFC in its scoring and competitive evaluation of applications for funding under the SAIL program to prevent conflict with federal rules. The bill replaces the domicile preference with developers and general contractors who demonstrate the highest rate of Florida job creation in the development and construction of affordable housing.

Temporary Limitation of New Construction

The bill provides a legislative finding that:

“due to the current economic conditions in the housing market there is a critical need to rehabilitate or sell excess inventory of unsold homes, including foreclosed homes and newly constructed homes, as well as a critical need for the rehabilitation and preservation of older, affordable apartments. The Legislature further finds that there is a critical need to create housing-related jobs and that these conditions require the targeting of state and local housing trust fund moneys to assist in the sale or rehabilitation of existing homes and the preservation and rehabilitation of older rental apartments.”

The bill provides that notwithstanding current law³, funds from the State Housing Trust Fund or the Local Government Housing Trust Fund that are appropriated for use in the SAIL Program, Florida Homeownership Assistance Program (FHAP), Community Workforce Housing Innovation Pilot (CWHIP) Program, or the State Housing Initiatives Partnership (SHIP) Program may not be used to:

- Finance or otherwise assist the construction or purchase of housing sold to eligible individuals, unless the housing unit being sold had an initial certificate of occupancy prior to December 31, 2009; or
- Finance or otherwise assist in the construction or purchase of rental housing, unless the development being financed or assisted received its initial certificate of occupancy prior to December 31, 1995.

The bill expressly states that nothing in this section restricts the use of such 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. It also provides that the use of such funds is subject to the restrictions of the program under which the funding is made available.

This section and the limitations imparted by it expires July 1, 2011.

Agency Inspector General

Current situation

Section 20.055 (2), F.S., establishes the Office of the Inspector General (OIG) in each state agency to promote accountability, integrity, and efficiency in government. Each Inspector General (IG) is appointed, supervised, and removed by their respective agency head. The major responsibilities of the OIG include investigations, audits, and reviews of state agency programs and activities.

Section 20.055(5), F.S., established the following minimum qualification for an agency inspector:

³ ss. 420.507(22)(a) and (23)(a), 420.5087(6)(l), 420.5088, 420.5095, and 420.9075(1)(b) and (5)(b), F.S.

- A bachelor's degree from an accredited college or university with a major in accounting, or with a major in business which includes five courses in accounting, and 5 years of experience as an internal auditor or independent postauditor, electronic data processing auditor, accountant, or any combination thereof; or
- A master's degree in accounting, business administration, or public administration from an accredited college or university and 4 years of experience as required above; or
- A certified public accountant license issued pursuant to chapter 473, F.S., or a certified internal audit certificate issued by the Institute of Internal Auditors or earned by examination, and 4 years of experience as required above.

Section 20.055 (6), F.S., states that investigations are designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government. Accordingly, the following duties are performed by OIG:

- Receive complaints and coordinate all activities of the agency as required by the Whistle-blower's Act pursuant to ss. 112.3187-112.31895, F.S.
- Receive and consider the complaints which do not meet the criteria for an investigation under the Whistle-blower's Act and conduct, supervise, or coordinate such inquiries, investigations, or reviews as the IG deems appropriate.
- Report expeditiously to the Department of Law Enforcement or other law enforcement agencies, as appropriate, whenever the IG has reasonable grounds to believe there has been a violation of criminal law.
- Conduct investigations and other inquiries free of actual or perceived impairment to the independence of the IG or the IG's office. This shall include freedom from any interference with investigations and timely access to records and other sources of information.
- Submit in a timely fashion final reports on investigations conducted by the IG to the agency head, except for whistle-blower's investigations, which shall be conducted and reported pursuant to s. 112.3189, F.S.

Audits are independent appraisals designed to examine and evaluate agency programs and activities. An inherent objective when performing audits is to review and evaluate internal controls necessary to ensure fiscal accountability. Audits must be conducted in accordance with the current Standards for the Professional Practice of Internal Auditing and subsequent Internal Auditing Standards or Statements on Internal Auditing Standards published by the Institute of Internal Auditors, Inc., or, where appropriate, in accordance with generally accepted governmental auditing standards.

Final reports are submitted to the agency head and the Auditor General, whose office is directed to give official recognition to their findings and recommendations as part of its post-audit responsibilities.

Section 20.055(7), F.S., requires each inspector general to prepare an annual report summarizing the annual activities of the OIG. The report is due September 30, following the preceding fiscal year.

Effects of the bill

The bill amends s. 20.055(1)(a), F.S., and s. 20.055(1)(b), F.S., respectively adding the "Florida Housing Finance Corporation" to the definition of "State Agency" and the "Board of Directors of the Florida Housing Finance Corporation" to the definition of "Agency Head" for the purposes of s. 20.055, F.S., thereby conferring the duties and responsibilities described above on the IG position created below.

The bill amends s. 20.055(7), F.S., to adjust the reporting deadline for the IG's annual report to reflect the reporting period (calendar year) of the FHFC.

The bill amends s. 420.506, F.S., creating an IG position for the FHFC and provides for the appointment and removal of the IG by the director with the advice and consent of the board. The FHFC's IG will perform the duties of an agency inspector general as provided in s. 20.055, F.S., and will administratively report to the director. The FHFC's Inspector general will be required to meet the minimal qualification established by s. 20.055(4), F.S., and the board may establish additional qualifications.

The bill amends s.420.006, F.S., removing an obsolete cross-reference (s.216.0166, F.S.) and removes DCA inspector general's responsibilities to serve as FHFC's inspector general.

Board of Directors

Current situation

FHFC is governed by a nine-member board of directors appointed by the Governor and subject to Senate confirmation, with the following interests represented pursuant to Section 420.504 (3), F.S.:

- Residential home builder;
- Commercial builder;
- Banker or mortgage banker;
- Building labor representative;
- Low income advocate;
- Former local government elected official;
- Two Florida citizens who are none of the above; and
- The Secretary of the Florida Department of Community Affairs (ex officio).

Effects of the bill

The bill amends s. 420.504(3), F.S., and permits the Secretary of the Florida Department of Community Affairs to designate a senior-level agency employee to serve as the DCA's ex officio board member.

B. SECTION DIRECTORY:

Section 1: Amends paragraphs (a) and (b) of subsection (1) and subsection (7) of section 20.055, F.S., relating to Agency Inspector General.

Section 2: Creates subsection 156.608(11), F.S., authorizing the FHFC to invest and reinvest surplus funds.

Section 3: Amends subsection 163.3177(6), F.S. requiring certain local government comprehensive plans to include housing for seniors.

Section 4: Amends Subsections 201.15 (9), (10), (13), F.S., as amended by chapters 2009-17, 2009-21, and 2009-68, L.O.F., removing the statutory limitations on the amount of documentary stamp revenue that go into the State Housing Trust Fund and the Local Government Housing Trust Fund.

Section 5: Repeals section 8 of chapter 2009-131, L.O.F., retroactively to June 30, 2009.

Section 6: Amends subsection (4) of s. 420.003, F.S., providing additional policy guidelines under the state housing strategy for the development of programs for housing production or rehabilitation; including persons with special needs in the strategy's periodic review and report.

Section 7: Creates subsections 420.004(7) and (13), F.S., defining the terms "disabling condition" and "person with special needs".

Section 8: Amends. 420.0006, F.S., relating to appointment of an IG of the FHFC.

Section 9: Amends subsection (3) of s. 420.504, F.S., relating to the DCA secretary's power designate a senior-level agency employee to serve as the DCA's ex officio board.

Section 10: Amends s. 420.506, F.S., relating to the FHFC and FHFC's Inspector General.

Section 11: Amends s. 420.507, F.S., extends low interest mortgage loans for the SAIL Program to sponsors of projects who set aside units for persons with special needs and creates s. 420.507(33),

F.S., to establish the authority of the FHFC to administer programs receiving federal funding for which no corresponding program has been previously created by statute. In addition, amends s. 420.507(47), deleting criteria for domiciled builder preference language replacing that with criteria which favors job creation rate.

Section 12: Amends s. 420.5087, F.S., includes persons with special needs as a tenant group for specified purposes of the SAIL Program and defines substantial experience for the purposes of competitive criteria.

Section 13: Amends s. 163.31771, F.S., to conform cross references.

Section 14: Amends s. 212.08, F.S., to conform cross references.

Section 15: Amends s. 215.5586, F.S., to conform cross references.

Section 16: Amends s. 420.503, F.S., to conform cross references.

Section 17: Provides that funds from various affordable housing trust funds and programs may not be used to finance or otherwise assist new construction until July 1, 2011.

Section 18: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

EDR's consensus estimate found that the removal of the statutory limitations on the amount of documentary stamp tax revenues that go into the State Housing Trust Fund and the Local Government Housing Trust Fund will have no impact to general revenue cash in Fiscal Year 2010-11 and 2011-12. However, based on a four-year outlook there is a negative fiscal impact to general revenue cash of \$600,000 in Fiscal Year 2012-13 and \$21.4 million in Fiscal Year 2013-14. Therefore, EDR's consensus estimate found the bill has a recurring negative impact to General Revenue of \$21.4 million in Fiscal Year 2013-14.

Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill contains provisions that direct funds from various affordable housing trust funds and programs may not be used to finance or otherwise assist new construction until July 1, 2011. These provisions are aimed at reducing the surplus of available homes on the market.

D. FISCAL COMMENTS:

See above

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not appear to require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None

B. RULE-MAKING AUTHORITY:

Establishes the authority of 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.

Requires the FHFC to develop rules for determining Florida job creation rate in the development and construction of affordable housing in its scoring and competitive evaluation of applications for the SAIL program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 3, 2010, HB 665 was amended in the Military & Local Affairs Policy Committee upon adoption of a two amendments. The amendments are detailed below.

Amendment 1

This amendment removed the repeal of s. 201.15(15), F.S. If this section was repealed and the required funds were not allocated to the State Housing Trust Fund, the bonds under the program would be without backing and this would affect the rating of those bonds. This would affect Florida Housing's ability to raise funds through bond issuances going forward.

Amendment 2

This amendment removed the repeal of s. 420.5061, F.S., this provision requires the FHFC to transfer service charges to General Revenue. The repeal would have diverted approximately \$1.3M annually from General Revenue to the FHFC beginning in FY 2010-11.

On March 18, 2010, HB 665 was amended in the Full Appropriations Council on Education and Economic Development upon adoption of three amendments and one amendment to the amendment. The amendments are detailed below.

Amendment 1 and the Amendment to Amendment 1

This amendment clarified section 420.507, F.S., regarding developers and general contractors considered to be domiciled within the State and what constitutes "substantial experience" for the purposes of competitive housing programs. The amendment to this amendment added additional clarifying provisions concerning a developer entity with a parent company and their domicile status.

Amendment 2

This amendment clarified section 420.5087, F.S., to refer to section 420.507(47) when considering “substantial experience” for the State Apartment Incentive Loan program.

Amendment 3

This amendment amends section 163.3177, F.S., to include affordable housing for seniors as a housing element of a comprehensive plan. The amendment also adds a provision requiring that real property conveyed to a local government for affordable housing is disposed of by the local government pursuant to section 125.379, F.S. or section 166.0451, F.S.

The analysis reflects the bill as amended.

On April 7, 2010, HB 665 was amended in the Economic Development & Community Affairs Policy Council upon adoption of four amendments. The amendments are detailed below.

The analysis reflects the bill as amended.

Amendment 1

- Permits the Secretary of the Florida Department of Community Affairs to designate a senior-level agency employee to serve as the DCA’s ex officio board member.
- Creates an Inspector General position for the FHFC.

Amendment 2

Removed ambiguous language that the bill added to the state housing strategy. The stricken language is provided below.

“rental housing should be administered to address the housing needs of persons most in need of housing”

Amendment 3

Revised the FHFC scoring system for evaluation of SAIL applications. The amendment deletes criteria for domiciled builder preference language to prevent conflict with federal rules. The amendment replaces that with criteria which favors job creation rate.

Amendment 4

Narrowed the provision that affordable housing for seniors included local comprehensive plans to counties with a population of more than 20% of persons 60 years of age and older and a total population of over 100,000 persons.