

## FINAL BILL ANALYSIS

**BILL #:** HB 639

**FINAL HOUSE FLOOR ACTION:**

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**SPONSOR:** Rep. Aubuchon

**GOVERNOR'S ACTION:** Approved

**COMPANION BILLS:** SB 912

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### SUMMARY ANALYSIS

HB 639 passed the House on March 31, 2011, and subsequently passed the Senate on May 3, 2011. The bill was approved by the Governor on June 21, 2011, chapter 2011-189, Laws of Florida, and becomes effective July 1, 2011. The bill revises statutes which govern the implementation of affordable housing programs, practices and procedures administered by the Florida Housing Finance Corporation (FHFC). 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.
- Repeals section 8 of chapter 2009-131, L.O.F., retroactively. This eliminates a conflicting version of s. 201.15, F.S., relating to the service charge on taxes collected, which passed concurrently with a different version during the 2009 legislative session, consistent with statutory revision's placement in the statute.
- Revises the state housing strategy to provide targeted assistance for persons with special needs and requires the periodic reviews and reports to include an analysis of persons with special needs.
- Creates two additional definitions to enact the newly established state housing strategies. Those new definitions are aimed to serve populations defined as suffering from a "disabling condition" and those defined as a "person with special needs."
- Removes domicile of the developer and general contractor as criteria to be considered by the FHFC in its scoring and competitive evaluation of applications for funding under the SAIL program and replaces it with developers and general contractors who demonstrate the highest rate of Florida job creation in the development and construction of affordable housing.
- Requires local government comprehensive plans to include affordable housing for seniors as a part of the plan's housing element.
- Authorizes the FHFC to receive federal funding for which no corresponding program has been previously created by statute and to establish selection criteria for such funds by request for proposals or other competitive solicitation.
- Provides that funds from the State Housing Trust Fund or the Local Government Housing Trust Fund that are appropriated for use in the State Apartment Incentive Loan Program, Florida Homeownership Assistance Program, Community Workforce Housing Innovation Pilot Program, or the State Housing Initiatives Partnership Program may not be used to finance or otherwise assist new construction until July 1, 2012.

The Revenue Estimating Conference consensus estimate found there would be no impact to cash in the 2011-2012 fiscal year. However, based on a four-year outlook there would be an annualized negative impact to recurring general revenue of \$33.9 million and an annualized positive recurring impact to the state housing trust funds in the same amount.

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

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **The State Housing Initiatives Partnership (SHIP) Program and the Distribution of Documentary Stamp Taxes**

##### Overview

The Florida Housing Finance Corporation (FHFC)<sup>1</sup> is the state entity primarily responsible for encouraging the investment of private capital in residential housing and stimulating the construction and rehabilitation of affordable housing in Florida.<sup>2</sup> Originally, federal funds were the only resources that funded housing programs administered by the FHFC. To leverage these federal funds, in the late 1980s the Legislature appropriated funding for state programs.<sup>3</sup> With the enactment of the William E. Sadowski Act<sup>4</sup> which created the State Housing Initiatives Partnership (SHIP) Program,<sup>5</sup> the FHFC's programs are funded in part with revenues generated by the documentary stamp tax, which are often combined with federal funding. The FHFC administers a number of multifamily and single family housing programs that help local governments assist Floridians in obtaining safe, decent affordable housing.

The SHIP Program was created for the purpose of providing funds to local governments as an incentive for the creation of partnerships to produce and preserve affordable housing, further the housing element of the local comprehensive plan specific to affordable housing, and increase housing-related employment.<sup>6</sup> Portions of the documentary stamp tax are transferred into the Local Government Housing Trust Fund and distributed to counties and eligible municipalities<sup>7</sup> participating in the SHIP Program.<sup>8</sup> Counties and eligible municipalities must meet a number of requirements in order to receive funding.<sup>9</sup>

##### Current Law

The documentary stamp tax is imposed on documents that transfer interest in Florida real property<sup>10</sup> and current law provides for the distribution of documentary stamp taxes.<sup>11</sup> Documents subject to the tax include deeds; bonds; notes and written obligations to pay money;

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<sup>1</sup> The Florida Housing Finance Corporation (FHFC) was created as a public corporation within the Department of Community Affairs (DCA). However, the FHFC is a separate budget entity and is not subject to the control, supervision, or direction of DCA. Section 420.504, F.S.

<sup>2</sup> Section 420.502(7), F.S.

<sup>3</sup> Florida Housing Finance Corporation, *Sadowski Act Overview*, available at [http://www.floridahousing.org/FH-ImageWebDocs/AboutUS/SadowskiAct\\_Outline.pdf](http://www.floridahousing.org/FH-ImageWebDocs/AboutUS/SadowskiAct_Outline.pdf).

<sup>4</sup> Sections 1-35, ch. 92-317, L.O.F.

<sup>5</sup> Section 32, ch. 92-317, L.O.F.

<sup>6</sup> Section 420.9072, F.S.

<sup>7</sup> "Eligible municipality" means a municipality that is eligible for federal Community Development Block Grant entitlement moneys as an entitlement community identified in 24 C.F.R. s. 570, subpart D, Entitlement Grants, or a nonentitlement municipality that is receiving local housing distribution funds under an interlocal agreement that provides for possession and administrative control of funds to be transferred to the nonentitlement municipality. An eligible municipality that defers its participation in the community development block grants does not affect its eligibility for participation in the State Housing Initiatives Partnership Program. Section 420.9071(9), F.S.

<sup>8</sup> Sections 420.9071(17), F.S. and 420.9073, F.S.

<sup>9</sup> Section 420.9072(2)(a), F.S.

<sup>10</sup> Chapter 201, F.S.

<sup>11</sup> Section 201.15, F.S.

and mortgages, liens, and other evidences of indebtedness.<sup>12</sup> The taxes are primarily used to fund varied land and water conservation, preservation, and maintenance, as well as transportation programs.<sup>13</sup>

After the distribution specified by law,<sup>14</sup> the lesser of 7.53 percent of remaining documentary stamp taxes or \$107 million in each fiscal year must be paid into the State Treasury, of which half of this amount must be to the credit of the State Housing Trust Fund and the remaining half must be to the credit of the Local Government Housing Trust Fund.<sup>15</sup>

After the distribution specified by law,<sup>16</sup> the lesser of 8.66 percent of remaining documentary stamp taxes or \$136 million in each fiscal year must be paid into the State Treasury, of which 87.5 percent must be paid to the credit of the Local Government Housing Trust Fund and the remaining 12.5 percent must be paid to the credit of the State Housing Trust Fund.<sup>17</sup> In total, 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:

- Deleting the language providing 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<sup>18</sup> and replacing it with “seven and fifty-three hundredths” percent.
- Deleting the language providing 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<sup>19</sup> and replacing it with “eight and sixty-six hundredths” percent.

The caps on the above trust fund distributions are eliminated, so that 7.53 percent of net documentary stamp tax collections are split 50 percent to the State Housing Trust Fund and 50 percent to the Local Government Housing Trust Fund, and 8.66% of the net collections are split 12.5 percent to the State Housing Trust Fund and 87.5 percent to the Local Government Housing Trust Fund.

The 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 Revenue Estimating Conference consensus estimate found there would be no impact to cash in the 2011-2012 fiscal year. However, based on a four-year outlook there would be an annualized negative impact to recurring general revenue of \$33.9 million and an annualized positive recurring impact to the state housing trust funds in the same amount.

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<sup>12</sup> Florida Department of Revenue, *Documentary Stamp Tax*, Nov. 2009, available at <http://dor.myflorida.com/dor/forms/2009/gt800014.pdf>.

<sup>13</sup> Section 201.15, F.S.

<sup>14</sup> Section 201.15(1)-(8), F.S.

<sup>15</sup> Section 201.15(9), F.S.

<sup>16</sup> Section 201.15(1)-(9), F.S.

<sup>17</sup> Section 201.15(10), F.S.

<sup>18</sup> Section 201.15(9), F.S.

<sup>19</sup> Section 201.15(10), F.S.

## **Repeal of s. 8, ch. 2009-131, Laws of Florida; Taxes Collected Subject to Service Charge**

### Current Law

All taxes collected under this chapter are subject to a service charge<sup>20</sup> imposed by law.<sup>21</sup> 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.<sup>22</sup> 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 repeals 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.

## **Powers of the Florida Housing Finance Corporation (FHFC)**

### Current Law

Florida law grants the FHFC with specific powers necessary or convenient to carry out and effectuate the purposes for providing affordable housing.<sup>23</sup> Among the powers granted by the Legislature is the power to receive federal funding in connection with programs administered by the FHFC directly from the Federal Government.<sup>24</sup>

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<sup>20</sup> Section 201.20(1), F.S.

<sup>21</sup> Section 201.15, F.S.

<sup>22</sup> *Id.*

<sup>23</sup> Sections 159.608 and 420.507, F.S.

<sup>24</sup> Section 420.507(33), F.S.

## Effect of the Bill

The 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. This expands the ability of the FHFC to expend federal housing relief funds in an expedient and efficient manner.

The State Apartment Incentive Loan (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 criteria to be considered by the 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.

## **State Housing Strategy**

### Current Law

The state's housing strategy is intended to carry the state towards the goal of assuring that by the year 2010 each Floridian would have decent and affordable housing. The strategy must involve state, regional, and local governments working in partnership with communities and the private sector and must involve financial as well as regulatory commitment to accomplish the goal.<sup>25</sup> The strategy includes specific policies relating to housing need; public-private partnerships; preservation of housing stock; public housing; and housing production or rehabilitation programs.<sup>26</sup>

The Shimberg Center for Affordable Housing at the University of Florida, in consultation with DCA and the FHFC, is directed to review and evaluate existing housing rehabilitation, production, and finance programs to determine their consistency with relevant policies of the state's housing strategy and identify the needs of specific populations, including, but not limited to, elderly and handicapped persons, and must recommend statutory modifications where appropriate.<sup>27</sup>

Currently, the 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 to provide targeted assistance for persons with special needs, 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.

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<sup>25</sup> Section 420.0003, F.S.

<sup>26</sup> Section 420.003(3), F.S.

<sup>27</sup> Section 420.003(4), F.S.

- Establishes a maximum threshold of ten percent of the SAIL funds available at that time to be used for persons with special needs.

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; and
  - 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 also amends the provisions of law related to the housing element of the local government comprehensive planning process and provides that local comprehensive plans may include affordable housing for persons 60 years of age and older as a part of their housing element.

## **New Construction and the Preservation of Existing Affordable Multifamily Rental Housing Job Creation**

The FHFC generally provides debt and equity financing to developers who leverage federal and state resources with private and other public sector funding to develop new rental apartments or rehabilitate existing affordable units. Both rehabilitation and new construction provide sources of direct and indirect economic benefit and jobs.

Currently, there are a variety of economic conditions that impact the ability of construction jobs to be a useful economic generator in Florida.<sup>28</sup> With the proliferation of unsold single family homes that are now available for rent, housing rents have been pushed down in many markets, leading to an oversupply of affordable rental housing and high vacancy rates in those rental markets with slow or no population growth (or new household formations). However, in some markets, vacancy rates are low and there is a continued demand for new rental housing.<sup>29</sup>

The FHFC has determined that each new construction development, on average, creates more jobs than each preservation development: 347 jobs per new construction property, versus 215 jobs per preservation property. However, when equal allocations to new construction and preservation are made, as proposed in the FHFC’s proposed 2011 rules,<sup>30</sup> more total jobs are

<sup>28</sup> Florida Housing Finance Corporation, *Financing Affordable Rental Development*, March 2011, p. 1, available at <http://www.floridahousing.org/FH-ImageWebDocs/UniversalApps/2011/ImportantAnnouncements>.

<sup>29</sup> *Id.*

<sup>30</sup> The Florida Housing Finance Corporation (FHFC) has proposed rules (Rule 67-48, F.A.C. and Rule 67-21, F.A.C.) to establish the procedures by which the FHFC must administer the application process, determine loan amounts, make and service mortgage loans for new construction or rehabilitation of affordable rental units under the State Apartment Incentive Loan Program (s. 420.5087, F.S.); the HOME Investment Partnerships Program (s. 420.5089, F.S.); and administer the application process, determine Housing Credit amounts and implement the provisions of the Housing Credit Program (Section 42 of the Internal Revenue Code and s. 420.5099, F.S., and the Multifamily Mortgage Revenue Bond Program (Section 142 of the Internal Revenue Code and s. 420.509, F.S.). Florida Housing Finance Corporation, 2011 Universal Application, [http://apps.floridahousing.org/StandAlone/FHFC\\_ECM/ContentPage.aspx?PAGE=0238](http://apps.floridahousing.org/StandAlone/FHFC_ECM/ContentPage.aspx?PAGE=0238).

created overall by the preservation activities. This is because preservation developments require fewer Low Income Housing Tax Credits to complete and the cost of preservation development is generally lower than new construction. Thus, the state's Low Income Housing Tax Credit allocation goes further for these developments and more developments can be financed with an equal amount of Low Income Housing Tax Credits – an estimated 22 preservation developments versus 12 new construction developments, therefore creating more jobs overall: preservation – 4,737 jobs; new construction – 4,164 jobs.<sup>31</sup>

In 2010, the FHFC carried out closings on 94 affordable multifamily rental developments (9,735 units) – 72 new construction developments with 7,264 units and 22 preservation developments with 2,471 units. These 94 rental developments generated a total development cost of \$1.69 billion. This translates into approximately \$3.86 billion in total economic activity and over 30,906 jobs.<sup>32</sup>

### The Need for Preservation and New Construction

According to the FHFC, there is a need for affordable new construction as well as preservation of existing affordable multifamily rental housing. While there is a need for new construction in some of Florida's markets, in many counties or areas of counties in Florida (over half), existing affordable rental communities in the FHFC's portfolio are experiencing low occupancy rates (in many cases, properties with only 85-89 percent of units occupied, with some even lower) because of "saturation." Because so much single family housing stock is currently on the market for sale, many owners have chosen to rent out their homes rather than try to find buyers in this market. These additional rental units are competing with market rate and affordable apartments, leading apartment owners to respond with lower rents and special offers. With an excess of rental housing available in many places, vacancies in the FHFC's portfolio are higher than usual.<sup>33</sup>

The FHFC states that its objective is to carefully target any new rental construction to those areas of the state where there is a need for such housing. The goal is to help avoid cannibalizing existing state financed rental developments and in particular those developments in the Florida Affordable Housing Guarantee Program<sup>34</sup> portfolio.<sup>35</sup> Negative pressure on the

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<sup>31</sup> The FHFC evaluated the economic and job impacts of its proposed Low Income Housing Tax Credit cycle with the University of Florida's Shimberg Center for Housing Studies. IMPLAN Version 3, an econometric model along with 2009 Florida state data, was used to estimate impacts from financing both new construction and preservation developments. Florida Housing Finance Corporation, *Financing Affordable Rental Development*, March 2011, p. 1, available at <http://www.floridahousing.org/FH-ImageWebDocs/UniversalApps/2011/ImportantAnnouncements>.

<sup>32</sup> Florida Housing Finance Corporation, *2010 Annual Report*, Letter from the Chairman and Executive Director, March 2011, p.4, available at [http://www.floridahousing.org/FH-ImageWebDocs/Newsroom/Publications/AnnualReports/FHFC\\_2010AR.pdf](http://www.floridahousing.org/FH-ImageWebDocs/Newsroom/Publications/AnnualReports/FHFC_2010AR.pdf).

<sup>33</sup> Florida Housing Finance Corporation, *Financing Affordable Rental Development*, March 2011, p. 6, available at <http://www.floridahousing.org/FH-ImageWebDocs/UniversalApps/2011/ImportantAnnouncements>.

<sup>34</sup> The Florida Affordable Housing Guarantee Program issued guarantees on mortgages of bond-financed affordable rental housing between 1993 and 2005. This action was intended to create a security mechanism that allowed issuers of mortgage revenue bonds to sell affordable housing bonds in the primary and secondary markets. Most of the transactions in this portfolio are 50 percent guaranteed by the U.S. Department of Housing and Urban Development Risk Sharing Program. However, due to the current market conditions, the FHFC has suspended the issuance of additional guarantees. Florida Housing Finance Corporation, *2010 Annual Report*, March 2011, p.6, available at [http://www.floridahousing.org/FH-ImageWebDocs/Newsroom/Publications/AnnualReports/FHFC\\_2010AR.pdf](http://www.floridahousing.org/FH-ImageWebDocs/Newsroom/Publications/AnnualReports/FHFC_2010AR.pdf). See also s. 420.5092, F.S.

<sup>35</sup> In 2009, Fitch Ratings downgraded the state's affordable housing guarantee fund from "A+" to "A-" with a negative outlook. The downgrade was based on a spike in the risk-to-capital ratio, five claim payments on properties within the portfolio in nine months, and operating losses in fiscal [year] 2008. The rating considered a risk-to-capital level within the board-directed 5:1 risk-to-capital ratio. The absence of construction risk within the portfolio as well as the ongoing state

affordable rental transactions financed by the guarantee fund may lead to the replenishment of its reserves by drawing on the State Housing Trust Fund<sup>36</sup> to provide additional support to the guarantee fund. These resources have been utilized in recent years by the Legislature and Governor to help balance Florida's budget.<sup>37</sup>

With respect to preservation, there are over 400 rental properties throughout Florida that were originally financed with funding from the U.S. Housing and Urban Development and the U.S. Department of Agriculture's Rural Development programs and are now over twenty years old. Over 300 of these properties have substantial amounts of federal rental assistance as part of their overall financing package.<sup>38</sup> The proposed preservation resources are intended to assist the state with two objectives:<sup>39</sup>

- To recapitalize and rehabilitate older properties which are falling into disrepair because of age.
- To enable the preservation of the federal rental assistance that enables these rental properties to serve Floridians with very low incomes. The federal rental assistance provides support directly to these properties in exchange for serving elders, persons with disabilities and others with extremely low incomes who cannot afford to pay rents at levels that will support daily operational expenses at a property. Preservation allows the federal rental assistance to remain on the property. Without this federal rental assistance, which is rarely provided to new construction developments, it would be difficult to house these same families in newly constructed rental developments financed through today's typical Low Income Housing Tax Credit financing structures.

## **Temporary Limitation of New Construction**

### Effect of the Bill

The bill places a temporary limitation on new construction and creates the following legislative finding:

*“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.”*

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support through the fund's ability to replenish the fund by drawing on a portion of future documentary stamp tax collections made to the State Housing Trust Fund. Negative rating pressure may occur if the effective risk-to-capital ratio rises above the board-directed maximum 5:1 ratio; the impact of additional claims are large; the documentary stamp tax allocations to the State Housing Trust Fund are diminished and/or the fund's operating performance remains weak. Business Wire, A Berkshire Hathaway Company, *Fitch Downgrades Florida Housing Finance Corp's Guarantee Fund's IFS to "A-"; Outlook Negative*, Aug. 18, 2009, available at <http://www.businesswire.com/news/home/20090818006320/en/Fitch-Downgrades-Florida-Housing-Finance-Corps-Guarantee>.

<sup>36</sup> Section 420.5092(5) and (6), F.S.

<sup>37</sup> Florida Housing Finance Corporation, *Financing Affordable Rental Development*, March 2011, p. 6, available at <http://www.floridahousing.org/FH-ImageWebDocs/UniversalApps/2011/ImportantAnnouncements>.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*



The bill provides that notwithstanding current law,<sup>40</sup> 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, 2010; 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, 1996.

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, 2010, or the acquisition and rehabilitation of apartments that received their initial certificate of occupancy prior to December 31, 1996. 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 expire July 1, 2012.

## **FHFC Board of Directors**

### Current Law

The FHFC is governed by a nine-member board of directors appointed by the Governor and subject to Senate confirmation as follows:<sup>41</sup>

- A residential home builder.
- A commercial builder.
- A banker or mortgage banker.
- A building labor representative.
- An advocate for low-income persons.
- A former local government elected official.
- Two Florida citizens who are not principally employed in one of the above-listed industries.
- The Secretary of the Florida Department of Community Affairs (ex officio and voting).

### Effect of the Bill

The bill 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.

## **Agency Inspectors General**

### Current Law

Florida law provides for the establishment of an Office of the Inspector General (OIG) in each state agency to promote accountability, integrity, and efficiency in government.<sup>42</sup> Each Inspector General (IG) is appointed, supervised, and removed by their respective agency head.<sup>43</sup> The major responsibilities of the OIG include investigations, audits, and reviews of state

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<sup>40</sup> 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.

<sup>41</sup> Section 420.504(3), F.S.

<sup>42</sup> Section 20.055(2), F.S.

<sup>43</sup> Section 20.055(3), F.S.

agency programs and activities.<sup>44</sup> Currently, the IG for DCA is directed to perform for the FHFC the functions of the IG and reports to the secretary of DCA.<sup>45</sup>

The minimum qualifications for an agency IG are as follows:<sup>46</sup>

- 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<sup>47</sup> 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.

Investigations by the IG are designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government.<sup>48</sup> Accordingly, the following duties are performed by OIG:<sup>49</sup>

- Receive complaints and coordinate all activities of the agency as required by the Whistle-blower's Act.<sup>50</sup>
- 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.<sup>51</sup> 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.<sup>52</sup>

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<sup>44</sup> Section 20.055(2), F.S.

<sup>45</sup> Section 420.0006, F.S.

<sup>46</sup> Section 20.055(5), F.S.

<sup>47</sup> Chapter 473, F.S.

<sup>48</sup> Section 20.055(6), F.S.

<sup>49</sup> Section 20.055(6), F.S.

<sup>50</sup> Sections 112.3187-112.31895, F.S.

<sup>51</sup> Section 20.055(5), F.S.

<sup>52</sup> Section 20.055(5)(f) and (g), F.S.

Each IG is required to prepare an annual report summarizing the annual activities of the OIG. The report is due September 30, following the preceding fiscal year.<sup>53</sup>

#### Effect of Proposed Changes

The bill establishes 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 FHFC's board of directors (Board). The FHFC's IG will perform the duties of an agency inspector general as provided in IG will be required to meet the minimal qualifications established by law<sup>54</sup> and the Board is authorized to establish additional qualifications to meet the unique needs of the FHFC.

The bill amends the provisions of state law relating to the agency inspectors general to add 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" thereby conferring the duties and responsibilities described above on the newly FHFC IG position.

The bill adjusts the reporting deadline for the FHFC IG's annual report to reflect the reporting period (calendar year) of the FHFC. The bill also removes the requirement for DCA's IG to serve as the FHFC's IG and removes an obsolete cross-reference.

#### **Local Housing Finance Authorities**

##### Current Law

State law prescribes the guidelines for local government investment policies for public funds in excess of the amounts needed to meet current expenses.<sup>55</sup> The law 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.<sup>56</sup>

##### Effect of the Bill

The bill authorizes local housing finance authorities (HFAs) to invest and reinvest surplus funds in accordance with the state's local government investment policies<sup>57</sup> and provides that in addition to the investments expressly authorized by law,<sup>58</sup> local HFAs are 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."<sup>59</sup>

State restrictions, pertaining to "qualified public depositories" do not apply to some investments, including "public deposits which are fully secured under federal regulations."<sup>60</sup> The bill includes explicit intent language to structure this empowerment as supplementary authority and to avoid interpretation as a limitation upon any powers of a local HFA. 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

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<sup>53</sup> Section 20.055(7), F.S.

<sup>54</sup> Section 20.055(4), F.S.

<sup>55</sup> Section 218.415, F.S.

<sup>56</sup> *Id.*

<sup>57</sup> Section 218.415, F.S.

<sup>58</sup> Sections 218.415(16)((a)-(g) and (17)(a)-(d), F.S.

<sup>59</sup> Section 280.02(26), F.S.

<sup>60</sup> Section 280.03(3)(e), F.S.

language so that it does not include FDIC insured accounts. An auditor has suggested that a clarification would be beneficial.<sup>61</sup>

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The Revenue Estimating Conference consensus estimate found there would be no impact to cash in the 2011-2012 fiscal year. However, based on a four-year outlook there would be an annualized negative impact to recurring general revenue of \$33.9 million and an annualized positive recurring impact to the state housing trust funds in the same amount.

#### **2. 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, 2012. These provisions are aimed at reducing the surplus of available homes on the market.

### **D. FISCAL COMMENTS:**

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<sup>61</sup> Florida Association of Local Housing Finance Authorities, email and conversation with House Community & Military Affairs Subcommittee staff on February 28, 2011.