

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: SB 912

INTRODUCER: Senator Bennett

SUBJECT: Affordable Housing

DATE: March 14, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	Favorable
2.	Preston	Walsh	CF	Favorable
3.			BC	
4.				
5.				
6.				

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.

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 provides preference for general contractors who demonstrate the highest rate of Florida job creation in the development and construction of affordable housing and deletes current preference language. The bill also 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.

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, 420.504, 420.506, 420.507, and 420.5087.

This bill retroactively repeals s. 8, of chapter 2009-121, Laws of Florida.

II. Present Situation:

Agency Inspectors General

Section 20.055, F.S., requires each state agency¹ created in the organizational structure of state government to have an inspector general office contained within the agency. The office is created to provide a focal point of accountability efforts within the agency. Under current law, 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)² is a state entity primarily responsible for encouraging the construction and reconstruction of new and rehabilitated affordable housing in Florida.³ 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;⁴
- The Florida Homeowner Assistance Program (HAP), which includes the First Time Homebuyer Program, the Down Payment Assistance Program, the Homeownership Pool Program, and the Mortgage Credit Certificate program;
- The Florida Affordable Housing Guarantee Program, which encourages lenders to finance affordable housing by issuing guarantees on financing of affordable housing developments financed with mortgage revenue bonds;
- The State Housing Initiatives Partnership Program (SHIP), 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

¹ 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.

² Formerly the Florida Housing Finance Agency.

³ 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).

⁴ 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 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.⁵ 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.⁶

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 Department of Revenue classifies the documentary stamp taxes as two taxes imposed on different bases at different tax rates.⁷ The first 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.⁸ The second tax rate is 35 cents per each \$100 of consideration for certificates of indebtedness, promissory notes, wage assignments and retail charge account agreements.⁹

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 (described in further detail below).¹⁰ 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
- A re-allocation of ten cents of the existing documentary stamp tax revenues from general revenue to the affordable housing trust funds beginning in FY 1995-96.¹¹

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."¹² 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.¹³ In the 2010-2011 FY, the Legislature appropriated \$37.5 million to the FHFC.¹⁴

⁵ Sections 201.15(9) and (10), F.S.

⁶ See ss. 420.507(33) and 159.608, F.S.

⁷ Florida Revenue Estimating Conference, *2010 Florida Tax Handbook*, at 67-73 (2010) (on file with the Senate Committee on Community Affairs).

⁸ *Id.* See also s. 201.02(1), F.S.

⁹ *Id.*

¹⁰ Section 201.15(1), F.S.

¹¹ 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).

¹² *Id.*, see also ss. 201.15(9) and (10), F.S.

¹³ Senate Bill 1110 (2005).

¹⁴ Chapter 2010-152, s. 5 Laws of Fla. (HB 5001, General Appropriations Act and Implementing Bill for 2010-2011 Fiscal Year) (on file with the Senate Committee on Community Affairs).

Distribution of Documentary Stamp Taxes (s. 8, of ch. 2009-131, Laws of Florida)

Section 201.15, F.S., sets forth the distribution of the documentary stamp taxes. The first proceeds of the tax revenues are distributed to the General Revenue Fund as service charges under s. 215.20, F.S., or retained by the Department of Revenue as the cost of collection and enforcement of the taxes. The remaining revenues are distributed as follows:

- 63.31% to pay debt service on Preservation 2000 bonds, Florida Forever bonds, Everglades Restoration bonds. Any amount not needed for these payments is deposited into the General Revenue Fund.
- The lesser of 7.56% or \$84.9 million to the Land Acquisition Trust Fund;
- The lesser of 1.94% or \$26 million to the Land Acquisition Trust Fund for coastal lands;
- The lesser of 4.2% or \$60.5 million to the Water Management Lands Trust Fund;
- 3.52% to the Conservation and Recreation Lands Trust Fund;
- The lesser of 2.28% or \$34.1 million to the Invasive Plant Control Trust Fund;
- The lesser of 0.5% or \$9.3 million to the State Game Trust Fund;
- 0.5% divide equally between the Water Quality Assurance Trust Fund and the General Inspections Trust Fund;
- The lesser of 7.53% or \$107 million to the State Housing Trust Fund, half of which shall be credited to the Local Government Housing Trust Fund;
- The lesser of 8.66% or \$136 million, of which 12.5% shall be credited to the State Housing Trust Fund and 87.5% shall be credited to the Local Government Housing Trust Fund;
- The remainder to the General Revenue Fund.¹⁵

In 2009, the Legislature amended s. 201.15, F.S., to provide that all documentary stamp taxes collected by the state may be used to pay the debt service on bonds authorized before January 1, 2010. Provided in s. 8, of ch. 2009-131, of the Laws of Florida, the 2009 amendment further provided that:

(16) 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 January 1, 2010, exceed the amounts distributable pursuant to subsection (1), all moneys distributable pursuant to this section are available for such obligations and transferred in the amounts necessary to pay such obligations when due. However, amounts distributable pursuant to subsection (2), subsection (3), subsection (4), subsection (5), paragraph (9)(a), or paragraph (10)(a) 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.¹⁶

¹⁵ Fla. S. Comm. on Judiciary, CS/CS/CS/SB 2430 and SB 1960 (2009) Staff Analysis 7-8 (on file with the Senate Committee on Community Affairs). *See also* s. 201.15(1)-(17), F.S.

¹⁶ Chapter 2009-131, s. 8, Laws of Fla., *See also* s. 201.15(16), F.S.

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.¹⁷ 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 Florida¹⁸ to develop and maintain statewide data on affordable housing needs for specific populations.¹⁹ 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.²⁰

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.²¹ 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.²²

Local Government Investment Policies

Section 218.415, F.S., provides the statutory guidelines for local government investment policies for excess public funds,²³ requiring that such policies be structured to provide objectives for the safety of capital, liquidity of funds, and investment returns.²⁴ These investment policies must also specify performance measures that are commensurate with the nature and size of all the public funds in its custody.²⁵ Sections 218.415 (16) and (17), F.S., contain lists of authorized

¹⁷ Section 420.0003, F.S.

¹⁸ 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).

¹⁹ Section 420.0003(4)(c), F.S.

²⁰ *Id.*

²¹ Florida Housing Data Clearing House (FHDC) Shimberg Center for Affordable Housing, *Databases for Farm workers and Special Needs Populations*, available online at http://flhousingdata.shimberg.ufl.edu/SpecNeed_introduction.html (last visited on March 12, 2010).

²² 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).

²³ 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.

²⁴ 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.”).

²⁵ Section 218.415(3), F.S.

trust funds and accounts that local government units can invest and reinvest surplus public funds into by resolution.²⁶

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.²⁷ 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.”²⁸

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,²⁹ 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.”³⁰ 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.³¹

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.³² 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.³³

²⁶ See ss. 218.415(16)(a)-(i), F.S., *see also* ss. 218.415(17)(a)-(d), F.S.

²⁷ Section 280.02(26), F.S.

²⁸ Section 280.03(3)(e), F.S.

²⁹ Also known as “The Growth Management Act”

³⁰ Section 163.3177, F.S.

³¹ *Id.*

³² 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).

³³ 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., to include the FHFC to be a “state agency” for purposes of the agency’s inspector general and amends the definition for “agency head” to include the board of directors of the Florida Housing Finance Corporation. This section also requires the inspector general of the Florida Housing Finance Corporation to prepare an annual summary report of their activities in the preceding fiscal year no later than 90 days after the end of each fiscal year.

Section 2 amends s. 159.608, F.S., to authorize 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 repeals section 8, of chapter 2009-131, Laws of Florida, retroactive to June 30, 2009.

Section 6 amends s. 420.0003, F.S., of the State Housing Strategy Act to require annual affordable housing evaluations to specifically address persons with special needs.

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

Section 8 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, to make it consistent with the changes in section 1 of the bill.

Section 9 amends s. 420.504, F.S., to provide that the FHFC board of directors shall be composed of the Secretary of Community Affairs as an ex officio and voting member “or a senior-level agency employee designated by the secretary” and eight members specified by the Governor subject to the confirmation of the Senate based on the current statutory criteria.

Section 10 amends s. 420.506, 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. This section also provides certain responsibilities of the corporation’s inspector general and allows the FHFC to establish additional qualifications deemed necessary to meet the unique needs of the FHFC.

Section 11 amends s. 420.507, F.S., to extend the availability of low interest mortgage loans under the SAIL Program to include projects that set aside units for persons with special needs. This section also grants the FHFC 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.

This section deletes current preference language pertaining to “domicile” and “substantial experience” as they relate to developers and general contractors in competitive affordable housing programs and replaces it with “a preference for developers and general contractors who demonstrate the highest rate of Florida job creation in the development and construction of affordable housing.”

Section 12 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 10 percent of the funds available at that time. This section also conforms the preference language for developers and general contractors who demonstrate job creation in affordable housing development and construction to be consistent with the changes made in Section 11 of the bill.

Sections 13-16 amend current statutes to conform to cross-references provided in the bill.

Section 17 prohibits the use of affordable housing dollars for financing or assisting new construction until July 1, 2012. 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, 2010, or the acquisition and rehabilitation of apartments that received their initial certificate of occupancy prior to December 31, 1996.

Section 18 provides that the bill will take effect July 1, 2011.

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 not determined the fiscal impact of this bill; however, in reviewing similar legislation filed during the 2009-2010 Legislative Session (SB 262/HB 665), the Revenue Estimating Conference 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 would have no fiscal impact on state funds in fiscal year 2010-11. However, based on a four-year outlook, the Conference estimated a negative \$7.1 million impact on recurring general revenue receipts and a positive recurring impact in the same amount on the state housing trust funds.³⁴

This bill authorizes the FHFC to administer programs receiving federal funding for which no corresponding program has been previously created by statute and establishes 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.

³⁴ Revenue Estimating Conference, *Fiscal Impact for CS/SB 262, Removal of the Housing Trust Fund Distribution Cap* (March 22, 2010).

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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