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 Committee on Appropriations	
BILL:	PCS/SB 1328 (443072)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); and Senator Perry
SUBJECT:	Affordable Housing
DATE:	February 26, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	**Favorable**
2.	Hrdlicka	Hrdlicka	ATD	**Recommend: Fav/CS**
3.	Hrdlicka	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1328 creates the Hurricane Housing Recovery Program (HHRP) and the Rental Recovery Loan Program (RRLP) to expedite the creation of additional affordable housing in response to the needs created by the recent hurricanes. The Florida Housing Finance Corporation will fund the HHRP and RRLP as provided in the General Appropriations Act.

The bill requires the Department of Environmental Protection, the Department of Transportation, and the water management districts, in conjunction with the Florida Housing Finance Corporation, to evaluate all nonconservation surplus lands for suitability for residential use and the development of permanent affordable housing and to offer such parcels to the county or municipality where the land is located. The bill provides for additional evaluation criteria intended to address specific needs and characteristics for the development of affordable housing.

The bill exempts housing authorities from "user fees" and nonprofit housing corporations created by housing authorities from taxes, user fees, and assessments. The Revenue Estimating Conference has not yet estimated the fiscal impact of this provision. The term "user fees" is not defined in the bill but could be interpreted broadly to include fees for services such as garbage, electricity, storm water, etc.

The bill also provides for an expedited local permit approval process for affordable housing by reducing the time a local government entity has to approve or deny permit applications from 120 days to 60 days.

The bill authorizes the Florida Housing Finance Corporation to take certain administrative actions against an applicant or its affiliate for good cause, including a determination that the applicant or its affiliate made a material misrepresentation or engaged in fraudulent actions in connection with any application for an affordable housing program.

The bill limits the terms of agreements for multifamily rental projects to 30 years, unless the Florida Housing Finance Corporation finds that the project will be "economically feasible" beyond that time.

The HHRP and RRLP will be funded as provided in the General Appropriations Act. The Revenue Estimating Conference has not yet estimated the fiscal impact of the provision exempting housing authorities from "user fees" and nonprofit housing corporations created by housing authorities from taxes, user fees, and assessments

The bill takes effect July 1, 2018.

II. Present Situation:

The present situation is included in the effect of proposed changes.

III. Effect of Proposed Changes:

Affordable Housing

Present Situation

Affordable housing is defined in terms of household income. Housing is considered affordable when monthly rent or mortgage payments including taxes and insurance do not exceed 30 percent of the household income.[1] Resident eligibility for Florida's state and federally funded housing programs is typically governed by area median income (AMI) levels, published annually by the U.S. Department of Housing and Urban Development (HUD) for every county and metropolitan area. The following are standard household income level definitions and their relationship to the 2017 Florida state median of $59,000 for a family of four (as family size increases or decreases, the income range also increases or decreases):[2]

- Extremely low income – earning up to 30 percent AMI (at or below $17,700);[3]
- Very low income – earning from 30.01 to 50 percent AMI ($17,701 to $29,500);[4]
- Low income – earning from 50.01 to 80 percent AMI ($29,501 to $47,200);[5] and
- Moderate income – earning from 80.01 to 120 percent of AMI ($47,201 to $70,800).[6]

[1] Section 420.9071(2), F.S. Public housing, commonly referred to as Section 8 Housing, is provided by local housing agencies (HAs) for low-income residents. Funding for HAs is provided directly from HUD.
[2] U.S. Department of Housing and Urban Development, Office of Policy Research and Development, *FY 2017 HUD Income Limits Briefing Material*, March 21, 2017, p. 41, available at https://www.huduser.gov/portal/datasets/il/il17/IncomeLimitsBriefingMaterial-FY17.pdf.
[3] Section 420.0004(9), F.S.
[4] Section 420.9071(28), F.S.
[5] Section 420.9071(19), F.S.
[6] Section 420.9071(20), F.S.

The two primary state housing assistance programs are the State Housing Initiatives Partnership (SHIP)[7] and the State Apartment Incentive Loan (SAIL)[8] programs. The SHIP program provides funds to eligible local governments, allocated using a population-based formula, to address local housing needs as adopted in the Local Housing Assistance Plan. Eligible local government entities must develop and adopt local housing assistance plans that include, but are not limited to, strategies and incentives for the construction, rehabilitation, repair, or financing of affordable housing production.[9] The SAIL program provides low interest loans on a competitive basis as gap financing for the construction or substantial rehabilitation of multifamily affordable housing developments.[10]

Local Government Surplus Land (Sections 1 and 2)

Present Situation

Since July 1, 2007, all counties and municipalities have been required to prepare, every 3 years, an inventory list of all real property held in fee simple by the respective government entity that is appropriate for use as affordable housing. The list must be reviewed at a public hearing of the appropriate local governing body and may be revised at the conclusion of the public hearing. The governing body must adopt a resolution that includes the inventory following the meeting.[11]

Properties identified as appropriate for affordable housing may be:
- Offered for sale by the local government and the proceeds used to purchase land for the development of affordable housing or to increase the local government fund earmarked for affordable housing.
- Sold with a restriction that requires the development of the property as permanent affordable housing.
- Offered for donation to a nonprofit housing organization for the construction of permanent affordable housing.
- Otherwise made available for use for the production and preservation of permanent affordable housing.[12]

Effect of the Bill

Sections 1 and **2** amend ss. 125.379 and 166.0451, F.S., respectively, to require each county and municipality to include the following criteria when preparing the inventory list of real property and evaluating for use as affordable housing:
- Environmental suitability for construction;
- Site characteristics;
- Current land use designation;
- Current or anticipated zoning;

[7] Sections 420.907-9079, F.S.
[8] Section 420.5087, F.S.
[9] Section 420.9071(14), (15), & (16), F.S. These local housing plans must also align with the requirements for housing under the Local Government Comprehensive Planning and Land Development Regulation Act of 1985. Chapter 163, Part II, F.S.
[10] Section 420.5087, F.S.
[11] Sections 125.379 and 166.0451, F.S.
[12] *Id.*

- Whether the property is included in at least one special district;
- Existing infrastructure; and
- Proximity to employment opportunities, public transportation, and existing services.

Using Surplus State Lands for Affordable Housing (Sections 8, 3, 4, and 5)

Present Situation

The Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees),[13] the five water management districts (WMDs), and the Department of Transportation (DOT) may each acquire and hold real property for various public purposes.[14] Each agency must follow certain procedures to dispose of property that is no longer needed (surplus).

Board of Trustees

The Board of Trustees may determine which state lands may be surplused. To dispose of conservation lands, the Board of Trustees must determine whether the land is no longer needed for conservation purposes and may dispose of such lands by an affirmative vote of at least three members. To dispose of nonconservation lands, the Board of Trustees must determine whether the land is no longer needed and may dispose of such lands by an affirmative vote of at least three members.[15]

"Conservation lands" are lands managed for conservation, outdoor resource-based recreation, or archaeological or historic preservation, except those lands acquired solely to facilitate the acquisition of other conservation lands. Lands acquired for uses other than conservation, outdoor resource-based recreation, or archaeological or historic preservation are "nonconservation lands." Nonconservation lands include the following: correction and detention facilities, military installations and facilities, state office buildings, maintenance yards, State University or Florida College System institution campuses, agricultural field stations or offices, tower sites, law enforcement and license facilities, laboratories, hospitals, clinics, and other sites that possess no significant natural or historical resources.[16]

Any public or private entity or person may ask the Board of Trustees to surplus lands. The lead managing agency must review the request and make a recommendation to Acquisition and Restoration Council within 90 days. The council must immediately schedule a hearing to review the request at the next regularly scheduled hearing for any surplusing requests that have not been acted upon within 90 days.[17]

[13] The Board of Trustees consists of the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture. Art. IV, s. 4(f), Fla. Const., and s. 253.02(1), F.S. The Department of Environmental Protection, through its Division of State Lands, performs all staff duties and functions related to the acquisition, administration, and disposition of state lands. Section 253.002(1), F.S.
[14] Sections 253.001, 253.02, 337.25(1), and 373.089, F.S.
[15] Section 253.0341(1), F.S.
[16] Section 253.034(2)(c), F.S.
[17] Section 253.0341(11), F.S. The Acquisition and Restoration Council assists the Board of Trustees in reviewing the recommendations and plans for state-owned conservation lands. Section 259.035, F.S.

Before a building or parcel of land is offered for lease or sale, the Division of State Lands within the Department of Environmental Protection (DEP) must first offer the land for lease to state agencies, state universities, and Florida College System institutions.[18]

The division must determine the sale price of the land by considering an appraisal. If the value of the land is estimated at $500,000 or less, division may use a comparable sales analysis or broker's opinion.[19] The division must offer parcels valued at more than $500,000 by competitive bid first. If the parcel is not successfully sold by competitive bid, or the parcel is valued at $500,000 or less, then division may sell the property by any reasonable means.[20]

Water Management Districts

A WMD may sell lands its governing board determines to be surplus at any time. These lands must be sold at the highest price obtainable, but not less than the appraised value of the land determined by a certified appraiser 360 days before the sale.[21] Such sales must be in cash and on the terms set by the governing board of the WMD.[22] The WMD must publish notice of its intent to sell the land in a newspaper in the county where the land is located. The notice of intent must be published three times for three successive weeks at least 30 days, and not more than 360 days, before any sale. The notice of intent must describe the land or the interest or rights to be sold.[23]

Public and private entities may request that a WMD make its lands available for purchase when those lands are not essential or necessary to meet conservation. If so requested and the lands are determined to be surplus, the WMD must give priority consideration to public or private buyers who are willing to return the property to productive use so long as the property can reenter the county ad valorem tax roll.[24]

When deciding whether to sell lands designated as acquired for conservation purposes, the governing board of the WMD must determine by a two-thirds vote that the land is no longer needed for conservation purposes.[25] For all other lands, the governing board of the WMD must determine by a majority vote that the land is no longer needed.[26]

Prior to selling land, a WMD must generally first offer title to lands acquired in whole or in part with Florida Forever funds[27] to the Board of Trustees.[28] If the Board of Trustees declines to accept title to the land, the WMD may dispose of the land.[29]

[18] Section 253.0341(7), F.S.
[19] Section 253.0341(8), F.S.
[20] Section 253.0341(9), F.S.
[21] Section 373.089(1), F.S.
[22] Section 373.089(2), F.S.
[23] Section 373.089(3), F.S.
[24] Section 373.089(5), F.S.
[25] Section 373.089(6)(a), F.S.
[26] Section 373.089(6)(b), F.S.
[27] *See* ss. 259.105 and 259.1051, F.S.
[28] Section 373.089(7), F.S.
[29] Section 373.089, F.S.

Department of Transportation

The DOT may convey any land, building, or other property, real or personal, when it determines the property is not needed for the construction, operation, and maintenance of a transportation facility. The DOT may dispose of its surplus property through negotiations, sealed competitive bids, auctions, or any other means it deems to be in its best interest. The DOT must advertise the sale of property valued by the DOT at greater than $10,000.[30] The DOT may generally not sell property for less than the DOT's current estimate of value.[31]

DOT may afford a right of first refusal to the local government or other political subdivision in the jurisdiction where the parcel is situated in certain circumstances.[32]

Effect of the Bill

Section 8 creates s. 420.56, F.S., to make all surplus lands designated as nonconservation available for affordable housing before making the parcels available for purchase by other governmental entities or the public. As nonconservation land becomes available for surplus, the DEP (acting on behalf of the Board of Trustees), WMDs, and DOT must notify the Florida Housing Finance Corporation (FHFC) that the land is available for surplus before making the parcel available for any other use, including for purchase by other governmental entities or the public. The WMDs must only identify nonconservation surplus lands originally acquired using state funds.

The bill requires the FHFC to evaluate, in consultation with the DEP, WMDs, and DOT, whether the surplus lands identified by the DEP, WMDs, and DOT are suitable for affordable housing based on the following characteristics of the property:

- Environmental suitability for construction;
- Current and anticipated land use and zoning;
- Inclusion in one or more special districts;
- Existing infrastructure on the land such as roads, water, sewer, and electricity;
- Access to grocery stores within walking distance or by public transportation;
- Access to employment opportunities within walking distance or by public transportation;
- Access to public transportation within one-half mile; and
- Access to community services such as public libraries, food kitchens, and employment centers.

If the FHFC determines that the nonconservation surplus land is suitable for affordable housing, the bill requires the Board of Trustees, the WMDs, and DOT to first offer the land to the county and municipality where the land is located to be used for affordable housing before the entity offers the land to other governmental entities or the public. If the county and municipality where the parcel is located do not wish to use the parcel for affordable housing, the Board of Trustees, WMDs, or DOT may dispose of the parcel using the procedures in existing law.

[30] Section 337.25(4), F.S.
[31] Exceptions provided in Section 337.25(4)(a)-(d), F.S.
[32] Exceptions provided in Section 337.25(4)(a), (c), and (e), F.S.

The bill authorizes the Board of Trustees, WMDs, and DOT to sell the parcels identified as suitable for affordable housing for less than the appraised value to any party. If the agency sells the parcels for less than appraised value, the agency must place an encumbrance on the parcels to ensure the purchaser uses the land for affordable housing for a period of not less than 99 years.

The bill exempts the Board of Trustees, WMDs, and DOT from certain disposal procedures to expedite the sales of surplus land for affordable housing, specifically:

- The Board of Trustees does not need to follow appraisal and competitive bidding procedures;
- The WMDs do not need to follow their appraisal and advertising requirements and the procedures for selling land valued at $25,000 or less; and
- The DOT does not need to follow its disposal procedures.

The bill authorizes the Board of Trustees, WMDs, and DOT to determine the sale price of the parcels. The bill requires Board of Trustees, WMDs, and DOT to consider at least one appraisal, or if the estimated value of the land is $500,000 or less, a comparable sales analysis or a broker's opinion of value.

Section 3 amends s. 253.0341, F.S., to require the land manager of Board of Trustees owned land to evaluate and indicate whether state lands it manages are still being used for the purpose for which they were originally leased from the Board of Trustees every 3 years instead of every 10 years.

Section 3 also requires the Board of Trustees to offer nonconservation surplus lands to the county and municipality where the land is located for use for the construction of affordable housing as identified by the FHFC before offering it to other potential buyers. This allows those counties and municipalities the opportunity to purchase nonconservation lands for affordable housing prior to state agencies, state universities, and Florida College System institutions, who currently have the first opportunity to either lease or buy surplus lands. All lands not needed for affordable housing will still be offered first to state agencies, state universities, and Florida College System institutions before other being offered to other entities. If the surplus land is not used for affordable housing and not leased by a state agency, state university, or Florida College System institution, the Board of Trustees shall offer the parcel for lease or sale to a local or federal unit of government or a private party.

Section 4 amends s. 337.25, F.S., to require the DOT to evaluate all of its land not within a transportation corridor or within the right-of-way of a transportation facility at least every 10 years on a rotating basis to determine whether the DOT should retain the property. This change is consistent with the Board of Trustee’s current duty to review the management of its lands every 10 years in s. 253.0341(4), F.S., to determine if the lands should be kept.

Section 4 also requires the DOT to offer nonconservation surplus lands to the county and municipality where the land is located for use as affordable housing as identified by the FHFC before offering it to other potential buyers except when:

- The property was donated to the state for transportation purposes and a transportation facility has not been constructed for at least 5 years, plans have not been prepared for the construction of such facility, and the property is not located in a transportation corridor (then

the donated property is returned to the donor or his or her heirs, successors, assigns, or representatives);
- The DOT originally acquired the property specifically to provide replacement housing for persons displaced by transportation projects (then the DOT may negotiate for the sale of such property as replacement housing); or
- The DOT determines a sale to a person other than an abutting owner would be inequitable (then the property may be sold to the abutting owner for DOT's current estimate of value).

Section 13 amends s. 373.089, F.S., to require the WMDs to review all lands and interests or rights in lands every 10 years on a rotating basis to determine whether the lands are still needed for the purpose for which they were acquired. This change is consistent with the Board of Trustee's current duty to review the management of its lands every 10 years in s. 253.0341(4), F.S., to determine if the lands should be kept.

Section 13 also requires WMDs to offer nonconservation surplus lands to the county and municipality where the land is located for use as affordable housing as identified by the FHFC before offering it to other potential buyers. This requirement only applies to nonconservation surplus lands originally acquired using state funds.

Ineligible Applicants for Programs (Section 6)

Present Situation

Section 420.507, F.S., sets forth the powers of the FHFC to carry out the statutory requirements for affordable housing. These include typical corporation powers and duties as well as housing-specific powers, including the ability to preclude any applicant or its affiliate from participating in FHFC programs if the applicant or affiliate has made any material misrepresentations or engaged in fraudulent actions in connection with any application for a FHFC program.

An applicant is ineligible for funding under FHFC programs if the FHFC determines that an applicant or its affiliate has made material misrepresentations or engaged in fraudulent actions in connection with an FHFC application. Before the FHFC makes such a determination, it serves an administrative complaint on the applicant or its affiliate that "affords reasonable notice to the Applicant of the facts or conduct that warrant the intended action, specifies the proposed duration of ineligibility,[33] and advises the Applicant of the opportunity to request a hearing." An applicant is presumed to have engaged in fraudulent actions if the applicant or its affiliate has been convicted of fraud, theft, or misappropriation of funds or a felony in connection with any FHFC program; excluded from any federal or Florida procurement programs for any reason; or offered or given consideration with respect to a local contribution. Any business between the applicant or its affiliate and the FHFC is suspended pending issuance of a final order on the compliant or if the complaint is dismissed.[34]

[33] When establishing the period of ineligibility, the FHFC considers the applicant's compliance history, type of misrepresentation or fraud, and the degree of harm to the program that has been or may have been done.
[34] *See* Rules 67-21.003 and 67-48.004, F.A.C.

The 2017-2018 General Appropriation Act prohibits the FHFC from distributing or allocating funds to any applicant or its affiliate that has been served an administrative complaint based on making a material misrepresentation or engaging in fraudulent actions in connection with any application for a FHFC program, until the period of ineligibility has expired. "Any preliminary funding or allocation award made to an applicant or affiliate subject to such administrative complaint is rescinded unless the developer, applicant or affiliate has completed credit underwriting or has commenced construction at the time the administrative complaint is served."[35]

Effect of Proposed Changes

Section 6 amends s. 420.507, F.S., to add to the powers of the FHFC, the power to take certain actions against any applicant or its affiliate upon a determination of good cause by the FHFC and after the service of an administrative complaint and adequate notice. The FHFC may take one or more of the following actions:

- Preclude the applicant or affiliate from applying for funding from any FHFC program for a specified period.
- Revoke any previously awarded funding for any development for which construction or rehabilitation has not started.
- Suspend any funding, credit underwriting procedures, or application review for any development for which construction or rehabilitation has not started. The suspension may run from the date of filing of the administrative complaint until a final order is issued in regard to the complaint.

The bill defines "good cause" as meaning that the applicant or its affiliate has:

- Made a material misrepresentation or engaged in fraudulent actions in connection with any application for a corporation program;
- Been convicted or found guilty of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction that directly relates to the financing, construction, or management of affordable housing or the fraudulent procurement of state or federal funds.[36]
- Been excluded from federal or state procurement programs for any reason; or
- Offered or given consideration with respect to a local contribution in violation of rules of the FHFC.

The bill repeals the current authority of the FHFC to preclude any applicant or its affiliate from participating in FHFC programs if the applicant or affiliate has made any material misrepresentations or engaged in fraudulent actions in connection with any application for a FHFC program.

[35] Section 2225, proviso, ch. 2017-70, L.O.F.

[36] The bill states that the "record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of this state shall be admissible as prima facie evidence of such guilt."

Terms of Multifamily Rental Projects (Section 6)

Present Situation

Section 420.507, F.S., grants the FHFC the authority to require, as a condition of financing a multifamily rental project, that an agreement be recorded in the official records of the county where the real property is located, which requires that the project be used for affordable housing.

The federal government grants federal tax credits for the acquisition, rehabilitation, or construction of rental housing targeted to low-income households (the low-income housing tax credit).[37] In order to qualify for the tax credit, the developer must agree to rent the housing to people with low incomes and to charge rents that are no more than a certain amount. The developer must agree to preserve this "affordability" for the first 15 years of the program, called the initial compliance period, and then for an additional 15 years during the extended use period (also referred to as the "extended low-income housing commitment"). There is a process by which the developer can convert the property to market-rate units during the extended use period.

About 32 states require extended use periods greater than 30 years, some states provide incentives for projects that voluntarily agree to longer commitments, and some developments agree to local financing that comes with longer use restrictions.[38] The FHFC has stated that generally developers agree to enter into agreements with the FHFC for terms of 30 years, except for large-scale multifamily or elderly housing developments, which are generally for terms of 50 years.

Effect of Proposed Changes

Section 6 amends s. 420.507, F.S., related to the FHFC's authority to make certain requirements for financing multifamily rental projects. The FHFC may require an agreement to be recorded in the official records of the county where the property is located as a condition of financing the project, *including allocating competitive low-income housing tax credits*.

The bill limits the term of any for agreement for a multifamily rental project to the period of time required in federal law for the "extended low-income housing commitment" or extended use period. This effectively limits any agreement entered into by the FHFC for a multifamily rental project to 30 years. However, if the FHFC affirms at the time of the initial credit underwriting that the project will remain "economically feasible" beyond 30 years, then the agreement may be longer. The term "economically feasible" is not defined.

[37] 26 U.S.C. 42. U.S. Department of Housing and Urban Development, Office of Policy Development and Research, *Low-Income Housing Tax Credits*, July 10, 2017, available at https://www.huduser.gov/portal/datasets/lihtc.html (last visited February 21, 2018).
[38] U.S. Department of Housing and Urban Development, HUD USER, *What Happens to LIHTC Properties After Affordability Requirements Expire?*, August 17, 2012, available at https://www.huduser.gov/portal/pdredge/pdr_edge_research_081712.html (last visited February 21, 2018). National Low Income Housing Coalition, Low Income Housing Tax Credit Program, 2014, available at http://nlihc.org/sites/default/files/2014AG-254.pdf (last visited February 21, 2018).

State Apartment Incentive Loan Program Local Government Contribution (Section 7)

Present Situation

The SAIL program provides low-interest loans on a competitive basis to affordable housing developers each year. This money often serves to bridge the gap between the primary financing and the total cost of the development. SAIL dollars are available to individuals, public entities, nonprofit organizations, or for-profit organizations that propose the construction or substantial rehabilitation of multifamily units affordable to very low income individuals and families.[39]

The Florida Housing Finance Corporation administers the SAIL program and is required to establish a review committee for the competitive evaluation and selection of applications submitted. The evaluation criteria include local government contributions and local government comprehensive planning and activities that promote affordable housing.[40]

Effect of the Bill

Section 7 amends s. 420.5087, F.S., to require the evaluation of additional components related to local government contributions, including policies that promote access to public transportation, reduce the need for on-site parking, and expedite permits for affordable housing projects.

Hurricane Recovery Programs (Sections 9 and 10)

Present Situation

Following the 2004 hurricane season, a statewide Hurricane Housing Work Group was created to recommend how best to leverage funding recommended by the Governor for hurricane housing recovery needs. The work group recommended, and the Legislature subsequently funded, the Hurricane Housing Recovery Program (HHRP) and the Rental Recovery Loan Program (RRLP). As a result of the work group's recommendation, the 2005 Legislature appropriated $250 million for housing recovery: $208 million for the HHRP and another $42 million for the RRLP.[41] With those resources, and an additional $93 million appropriation in 2006 for hurricane rental funding, the FHFC states that it assisted over 10,000 families with the HHRP and created over 1,600 units with the RRLP.

Hurricane Housing Recovery Program

The Hurricane Housing Recovery Program was created as a local housing recovery program and modeled after the existing State Housing Incentive Program (SHIP) aimed at assisting homeowners with post-hurricane recovery efforts. The HHRP funds were distributed to local governments using a need-based formula to allow local communities to evaluate and address needs as appropriate.[42]

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[39] Florida Housing Finance Corporation, *State Apartment Incentive Loan, Background*, available at http://www.floridahousing.org/programs/developers-multifamily-programs/state-apartment-incentive-loan (last visited February 17, 2018).
[40] Section 420.5087(6)(c), F.S.
[41] Florida Housing Finance Corporation, *Bill Analysis for SB 1328*, p. 3, January 10, 2018. Chapter 2006-69, L.O.F.
[42] Florida Housing Finance Corporation, *Hurricane Housing Recovery Program*, available at http://floridahousing.org/webdocs/disasterrelief/HHRP/HHRPPage.PDF (last visited February 17, 2018).

Rental Recovery Loan Program

The Rental Recovery Loan Program was created to provide affordable rental units needed to promote the housing recovery needs of local communities. Modeled in part after the State Apartment Incentive Loan (SAIL) Program, the RRLP program allowed the state to leverage existing federal rental financing programs to provide units that served a range of incomes, including extremely low income households, throughout the areas impacted by the hurricanes.

Effects of the Bill

Section 9 creates s. 420.57, F.S., to establish the Hurricane Housing Recovery Program (HHRP) and the Rental Recovery Loan Program (RRLP) to provide funds to local governments for affordable housing recovery efforts.

The HHRP will provide resources to local governments according to a need-based formula that reflects affordable housing damage estimates and population impacts resulting from hurricanes. Eligible local governments must submit a strategy outlining proposed recovery actions, income levels and number of units to be served, and funding requests. Program funds must be used as follows:

- To serve households with incomes up to 120 percent of the AMI, except that at least 30 percent of program funds should be reserved for households with incomes up to 50 percent AMI and an additional 30 percent of program funds reserved for households with incomes up to 80 percent AMI.
- At least 65 percent of the funds *must* be used for homeownership.
- Up to 15 percent *may* be used for administrative expenses.
- Up to 0.25 percent *may* be used for compliance monitoring.

The RRLP will provide resources to build additional rental housing and allow the state to leverage federal rental financing similar to the SAIL program.

Both programs operate subject to specific appropriation in the General Appropriations Act.

Each participating local entity will be required submit a report of its use of HHRP funding. The FHFC is required to compile and submit the reports to the Senate President and Speaker of the House of Representatives.

The FHFC is granted rulemaking authority to administer the programs. **Section 10** provides the FHFC the authority to adopt emergency rules pursuant to s. 120.54, F.S., for the purpose of implementing these programs. The emergency rules remain in effect for 6 months and may be renewed until final rules are adopted for the programs.

Local Permit Approval Process (Section 11 and 13)

Present Situation

Local governments may enforce requirements to obtain building or development permits, including the processing applications and granting building permits.[43]

[43] Sections 553.79 and 553.792, F.S.

Counties, municipalities, and most special districts are not required to comply with the notice and procedural requirements of ch. 120, F.S., the Administrative Procedure Act.[44] For certain types of building permit applications,[45] the local government must meet certain deadlines:

- Within 10 days of the application being submitted, the local government must inform the applicant in writing of what information is needed to complete the application, if any.
- If no written notice of deficiency is provided, the application is deemed properly completed and accepted.
- Within 45 days of receiving a completed application, the local government must notify the applicant if additional information is needed to determine whether the application is sufficient.
- Within 120 days after receiving a completed application, the local government must approve, approve with conditions, or deny the application.[46]

Effect of the Bill

Section 13 creates s. 553.7923, F.S., to establish a new process for local government permit approval for affordable housing. A local government has 15 days after receiving an application for a development permit, construction permit, or certificate of occupancy for affordable housing to examine the application, notify the applicant of any apparent errors or omissions, and request any additional information the local government is authorized by law to require.

The local government may require any additional required information to be submitted within 10 days after the date it gives notice to the applicant. The local government must grant a request for an extension of time for submitting the additional information for good cause.

If a local government does not timely request addition information, it may not deny the development permit, construction permit, or certificate of occupancy for affordable housing if the applicant fails to correct an error or omission or to supply additional information.

An application is complete when the local government has received all of the requested information and the correction of any error or omission as necessary or when the time for notification has expired.

The local government must approve or deny an application for a development permit, construction permit, or certificate of occupancy for affordable housing within 60 days after receipt of a completed application, unless a shorter period of time for local government is provided by law. If the local government does not approve or deny within the time period, the application is considered approved, and the local government must issue the development permit, construction permit, or certificate of occupancy.

[44] *See* s. 120.52(1), F.S.
[45] The list includes permits for the following types of construction: accessory structure, alarm, nonresidential buildings less than 25,000 square feet, electric, irrigation, landscaping, mechanical, plumbing, residential units other than a single family unit, multifamily residential not exceeding 50 units, roofing, signs, site-plan approvals and subdivision plats not requiring public hearings or public notice, and lot grading and site alteration associated with the application. *See* s. 553.792(2), F.S.
[46] Section 553.792(1), F.S.

An applicant for a development permit, construction permit, or certificate of occupancy seeking to receive a permit by default must notify the local government in writing of its intent to rely upon the default approval. However, the applicant may not take any action based upon the default development permit, construction permit, or certificate of occupancy until the applicant receives notification or a receipt acknowledging that the local government received the notice. The applicant must retain the notification or receipt.

Section 11 amends s. 420.9071, F.S., to revise the definition of "local housing incentive strategies" to include expediting permits for affordable housing projects provided in s. 553.7923, F.S. Local housing incentive strategies are included in local housing assistance plans and must be included in various reports as required in the SHIP program provisions in part VII, ch. 420, F.S.

Housing Projects Exemptions (Section 12)

Present Situation

Section 423.02, F.S., exempts housing authorities from payment of taxes and special assessments for housing projects, including all property of the authority used for or in connection with the project. The authority may agree to make payments to the local government in lieu of taxes for services, improvements, or facilities furnished by the local government for the benefit of the project. Such payments are not allowed to exceed the estimated cost to the local government for the services, improvements, or facilities.

Public housing authorities have the power to create a for-profit or nonprofit corporation, limited liability company, or other similar business entity to develop, acquire, lease, construct, rehabilitate, manage, or operate multifamily or single family residential projects. The housing authority may hold an ownership interest or participate in the governance of the business entity.

Effect of Proposed Changes

Section 12 amends s. 423.02, F.S., to exempt housing authorities from "user fees" and to exempt nonprofit housing corporations created by housing authorities from taxes, user fees, and assessments. The authorities or their instrumentalities may still agree to make payments of to the local government in lieu of payment of such taxes, user fees, or assessments. The bill does not define the term "user fees." The term could be interpreted broadly to include fees for services such as garbage, electricity, etc. The term likely includes storm water fees.[47]

Effective Date (Section 14)

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill reduces the revenue raising authority of municipalities and

[47] *See City of Gainesville v. State*, 863 So. 2d 138 (Fla. 2003).

counties by exempting housing authorities from paying user fees and their nonprofit housing corporations from paying taxes, user fees, and assessments.

However, there are several exemptions and exceptions to the mandate requirements. The mandate requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2017-2018 was approximately $2.05 million or less.[48,49,50]

This bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not yet estimated the fiscal impact of section 12 exempting housing authorities from paying user fees and their nonprofit housing corporations from paying taxes, user fees, and assessments. The term "user fees" is not defined in the bill but could be interpreted broadly to include fees for services such as garbage, electricity, storm water, etc.

B. Private Sector Impact:

Developers of large-scale affordable housing developments will benefit from the limitation on the duration of the agreements with the FHFC.

Nonprofit business entities created by local housing authorities will benefit from the exemption from taxes, user fees, and assessments.

C. Government Sector Impact:

Local governments may need to replace the funds that would normally be derived from taxes, user fees, and assessments with other sources of revenue. The Revenue Estimating

[48] FLA. CONST. art. VII, s. 18(d).
[49] An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times $0.10. *See* Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited February 21, 2018).
[50] Based on the Demographic Estimating Conference's population adopted on April 1, 2017. The executive summary is available at http://edr.state.fl.us/Content/conferences/population/demographicsummary.pdf (last visited February 21, 2018).

Conference has not yet estimated the fiscal impact of section 12 exempting housing authorities from paying user fees and their nonprofit housing corporations from paying taxes, user fees, and assessments. The term "user fees" is not defined in the bill but could be interpreted broadly to include fees for services such as garbage, electricity, storm water, etc.

The hurricane recovery programs will be funded as provided in the General Appropriations Act. The bill allows the FHFC to use 15 percent of any appropriated funds for administrative costs and 0.25 percent for compliance monitoring.

The bill requires the FHFC to evaluate nonconservation surplus lands for suitable for the construction of affordable housing. Currently, the FHFC requires anyone proposing to develop affordable housing to demonstrate that the property is suitable for such purpose. This bill would require the FHFC to develop a new program and develop or contract for expertise to evaluate surplus lands. The cost for such activity it unknown at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 3 amends s. 253.0341(4), F.S., to require the land manager of land owned by the Board of Trustees of the Internal Improvement Trust Fund to evaluate and indicate whether state lands it manages are still being used for the purpose for which they were originally leased every 3 years instead of every 10 years. This change appears to be inconsistent with the Board of Trustee's duty to review the management of its lands at least every 10 years in s. 253.034(5), F.S., and the changes in this bill to require the WMDs and DOT to review their lands every 10 years to determine if the lands are still needed.

Section 1 adds as a new criterion in s. 125.379, F.S., for evaluating land for affordable housing purposes whether the land is located within a special district. Section 9 creates a similar criterion to evaluate land but refers to lands located in "special districts meant to revitalize the community." It is unclear whether the language in the two sections should be the same. Additionally, in its bill analysis, the FHFC noted that the corporation promotes new housing opportunities in economically vibrant areas not in need of revitalization and that the criterion may be more inclusive if it was expanded to properties suitable for residential use.[51]

Related to section 8, the FHFC notes that local governments, developers, and others may still conduct their own analysis and evaluations of the property for suitability for affordable housing, instead of only relying upon the evaluation by the state. Local governments would likely still rely upon their own local zoning and land use compatibility analysis and developers would still continue their own "due diligence" reviews to determine if a property was right for their purposes. The FHFC recommended that it might be more efficient for the local governments to evaluate the property to make the determination if the land is suitable for affordable housing and decide to purchase the land from the Board of Trustees, WMD, or DOT.

[51] Florida Housing Finance Corporation, *Bill Analysis for SB 1328*, p. 6, January 10, 2018.

The bill provides the FHFC the authority to adopt emergency rules pursuant to s. 120.54, F.S., for the purpose of implementing the hurricane recovery programs.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 125.379, 163.3180, 163.31801, 166.0451, 420.5087, 420.9071, 253.0341, 337.25, and 373.089.

This bill creates the following sections of the Florida Statutes: 420.0007, 420.54, and 420.56.

IX. Additional Information:

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

Recommended CS by Appropriations Subcommittee on Transportation, Tourism, and Economic Development on February 21, 2018:
The committee substitute:

- Removes the portions of the bill that amended ss. 163.3180 and 163.31801, F.S., which created a 5-year prohibition on local governments to charge concurrency and impact fees.
- Removes the amendment to s. 163.31801, F.S., which required local governments to provide reports on impact fees charged.
- Creates the local expedited permit statute in ch. 553, F.S., related to the building code instead of ch. 420, F.S., related to affordable housing.
- Clarifies that "local housing incentive strategies" include expedited development permits, construction permits, and certificates of occupancy.
- Allows the FHFC to take certain administrative action against a developer or an affiliate of the developer for good cause.
- Limit contracts for financing multi-family rental housing projects to 30 years, unless at the time of initial credit writing the FHFC finds that the project will remain "economically feasible" beyond 30 years.
- Revises the hurricane recovery programs by:
  - Making the programs generally applicable to hurricanes, instead of specifically applicable to the impacts of Hurricanes Irma and Maria.
  - Removing the appropriation from the housing trust funds, and instead stating that the programs are funded as provided in the General Appropriations Act.
  - Directing the FHFC to allocate funds to local governments based on affordable housing damage estimates and *population impacts resulting from hurricanes*.
  - Allowing the FHFC to use 0.25 percent of the appropriation for compliance monitoring.
  - Clarifying that local governments annual reports are on their participation in the HHRP, removing the required dates for such annual reports, and requiring such reports to be made to the legislature.
  - Granting the FHFC emergency rulemaking authority to implement the programs.
- Exempts housing projects from "user fees."

- Exempts from all taxes, user fees, and special assessments the nonprofit instrumentalities of housing authorities (for nonprofit corporations, LLCs, etc., created by housing authorities to manage certain housing projects).

B. Amendments:

None.