

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 607 Housing Finance Authorities
SPONSOR(S): Local, Federal & Veterans Subcommittee, Santiago
TIED BILLS: IDEN./SIM. **BILLS:** SB 730

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	8 Y, 0 N, As CS	Miller	Miller
2) Ways & Means Committee			
3) Government Accountability Committee			

SUMMARY ANALYSIS

The Florida Housing Finance Authority Act authorizes each county to create by ordinance a Housing Finance Authority (HFA) to encourage investment in construction and rehabilitation of suitable affordable housing units. This is done through public financing and the use of low cost loans. HFAs are authorized to issue bonds to raise capital for financing qualifying projects and loans. By statute, the notes, mortgages, and other documents associated with loan transactions using bond proceeds are exempt from all taxes other than applicable Florida income taxes for interest and income earned.

In recent years HFAs have relied more on funding from other sources than bond proceeds because market interest rates were lower than the rates that could be attained for bonds. These other sources may include funds distributed from the State Housing Trust Fund or Local Government Housing Trust Fund and administered by HFAs through interlocal agreements with counties or municipalities. Loans made using such funds cannot utilize the tax exemptions available for loans using bond proceeds, so the documents created as part of such loans are subject to documentary stamp taxes.

The bill exempts loans made by HFAs using funds other than bond proceeds from documentary stamp taxes on notes and mortgages on the same basis as bond proceeds loans. The December 5, 2017 Revenue Estimating Conference projected a loss of \$800,000 in recurring revenues for each of the next five fiscal years.

The bill takes effect on July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Housing Finance Authorities

The Florida Housing Finance Authority Act¹ (Act) was enacted in 1978 in response to shortages both of affordable housing and capital for investment in such housing.² The Act would encourage “investment by private enterprise and (stimulate) construction and rehabilitation of housing through the use of public financing and...low cost loans...”³ in part by authorizing local governments to issue obligations the interest on which would be exempt from federal income taxation.⁴ Counties are authorized to create by ordinance a “Housing Finance Authority” (HFA) to carry out the powers under the Act.⁵

Currently, there are 24 HFAs registered with the Special District Accountability Program in the Department of Economic Opportunity.⁶ Each HFA is composed of a board of at least 5 members appointed by the governing body of the county to serve 4 year terms. A majority of the members must be knowledgeable in the field of labor, finance, or commerce.⁷ In addition to the usual authority of a public body corporate and politic,⁸ each HFA is authorized to:

- Acquire and own real and personal property under specific conditions;⁹
- Purchase, commit to purchase, make, or otherwise transact in mortgage loans and accompanying promissory notes for the construction, purchase, reconstruction, or rehabilitation of qualified property; however, sales proceeds must be reinvested in mortgage loans;¹⁰
- Issue bonds to raise capital for qualified housing and development;¹¹
- Lend funds to lending institutions under terms requiring the proceeds be used for making new mortgages for housing developments qualifying under the statute as affordable housing;¹²
- Make loans directly to eligible persons who otherwise cannot borrow from conventional lending services, such loans to be secured by mortgages on qualified property;¹³
- Loan funds to not for profit corporations to develop affordable housing;¹⁴ and
- Own, maintain, operate, control, and capitalize a savings and loan association with the limited purpose to provide low cost loans and related services for eligible persons to obtain affordable housing.¹⁵

¹ Ch. 78-89, s. 1, Laws of Fla., codified at ch. 159, Part IV, F.S.

² Section 159.602(1), F.S.

³ Section 159.602(2), F.S.

⁴ Section 159.602(4), F.S.

⁵ Section 159.604(1), F.S.

⁶ The following counties have active HFAs: Alachua, Brevard, Broward, Collier, Duval (Jacksonville), Escambia, Clay, Hillsborough, Lee, Leon, Manatee, Marion, Miami-Dade, Nassau, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, St. Johns, St. Lucie, Santa Rosa, Volusia. At <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (accessed 12/12/2017).

⁷ Section 159.605(1), F.S.

⁸ Including the power to sue and be sued, to enter into contracts and execute instruments necessary to the exercise of its powers, to receive and deposit funds. *See* s. 159.608, F.S.

⁹ Section 159.608(2), F.S.

¹⁰ Section 159.608(3), F.S.

¹¹ Section 159.608(4), F.S.

¹² Section 159.608(5), F.S.

¹³ Section 159.608(6), F.S.

¹⁴ Section 159.608(10)(a), F.S.

¹⁵ Section 159.608(9), F.S.

Housing Finance Authorities have no power of eminent domain.¹⁶ To raise capital a HFA may issue revenue and other types of bonds, the repayment of which may be from repayments received by the HFA or the sale of housing loans or commitments purchased by the HFA.¹⁷ Bonds must be secured,¹⁸ may not be paid from the general revenues of the HFA,¹⁹ and may not be a personal liability of the board members of the HFA.²⁰

Bonds issued by a HFA, and all notes, mortgages, or other instruments given to secure repayment of the bonds, are exempt from all taxes.²¹ However, this exemption does not extend to the state income tax on interest, income, or profits on debt obligations owned by a corporation.²²

Taxable Transactions by HFAs

Even though bonds issued by each HFA and financial instruments given to secure repayment of the bonds are tax exempt, mortgages, promissory notes, and other instruments pertaining to loans made by a HFA other than as part of a bond transaction remain subject to documentary stamp and intangible taxes.²³ This results in certain conventional loans made by a HFA with funds derived from sources other than bond proceeds being subject to payment of documentary stamp taxes.

For example, a portion of all documentary stamp taxes collected are credited to the State Housing and Local Government Housing Trust Funds.²⁴ These funds in turn are distributed by the Florida Housing Finance Corporation to the eligible counties and municipalities.²⁵ Local governments are encouraged and authorized to make agreements with other local entities in using the funds to provide affordable housing assistance.²⁶ HFAs are authorized to make agreements that are necessary for the exercise of their powers.²⁷

During the period August 22, 2016 – August 22, 2017, the HFAs financed 751 loans with public funds other than bond proceeds, with a total lending volume of \$124,502,930. The average amount of documentary stamps collected per loan was \$1,158.27.²⁸

Effect of Bill

The bill creates an exemption from document stamp taxes for any note or mortgage given in connection with a loan made by a HFA that is not derived from bond proceeds. The exemption does not apply to income taxes imposed on interest, income, or profits on debt obligations owned by a corporation or on a deed for property financed by a HFA. The exemption applies if at the time the note or mortgage is recorded in the public records the HFA submits documentation affirming the loan was made by or on behalf of the HFA.

B. SECTION DIRECTORY:

¹⁶ Section 159.61, F.S.

¹⁷ Section 159.612(1), F.S.

¹⁸ Section 159.612(2), F.S.

¹⁹ Section 159.612(3), F.S.

²⁰ Section 159.612(4), F.S.

²¹ Section 159.621, F.S.

²² Section 159.621, F.S. *See also* ss. 220.11, 220.12, F.S.

²³ *See* ss. 199.133, 201.01, 201.02, F.S.

²⁴ Section 201.15(4)(c), (4)(d), F.S. The Local Government Housing Trust Fund was created as part of The William E. Sadowski Affordable Housing Act, Ch. 92-317, s. 32, Laws of Fla., codified at s. 420.9079, F.S.

²⁵ Section 420.9072(4), F.S.

²⁶ Section 420.9072, F.S.

²⁷ Section 159.608(1), F.S.

²⁸ *See* attached Appendix A, chart prepared and submitted on behalf of the Hillsborough County Housing Finance Authority.

Section 1: Amends s. 159.621, F.S., to create an exemption from document stamp taxes on any note or mortgage given in connection with a loan made by a Housing Finance Authority, excluding income taxes.

Section 2: Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

According to the December 5, 2017 Revenue Estimating Conference,²⁹ the bill will have a negative recurring impact of \$500,000 in General Revenue and \$300,000 in trust fund revenues for a total impact of \$800,000 FY 2018-2019. The same impact was projected for FYs 2019-2020, 2020-2021, 2021-2022, and 2022-2023.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may lower the overall amount of an initial loan for an affordable housing home buyer from a housing finance authority.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

²⁹ Revenue Estimating Conference Report for 12/5/2017, at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2018/_pdf/Impact1201.pdf (accessed 12/16/2017).
STORAGE NAME: h0607a.LFV
DATE: 1/16/2018

The bill neither authorizes nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 16, 2017, the Local, Federal & Veterans Affairs adopted one amendment and approved the bill as a committee substitute. The amendment clarified the bill created an exemption from documentary stamp taxes on notes and mortgages created as a result of a loan made by or on behalf of a housing finance authority.

This analysis is drawn to the bill as amended by the Local, Federal & Veterans Affairs Subcommittee.

APPENDIX A

LOAN ACTIVITY BY LOCAL HFA'S: AUGUST 22, 2016 TO AUGUST 22, 2017 - TBA (NON-BOND) LOANS										
COUNTY	FIRST TIME HOMEBUYER	INCOME LIMIT (Non Targeted Area 1-2 ppl)	INCOME LIMIT (Non Targeted Area 3+ ppl)	PURCHASE PRICE LIMIT (non Targeted Area)	MIN FICO	MAX DTI	TBA FINANCED LOANS	TOTAL VOLUME	AVERAGE LOAN SIZE	AVERAGE DOC STAMP PER LOAN
ALACHUA	Yes	\$ 65,200	\$ 74,980	\$ 253,809	640	45%	4	\$ 466,296.00	\$ 116,574.00	\$ 816.02
BREVARD	Yes	61,700	70,955	253,809	640	45%	4	619,339.00	154,834.75	1,083.84
BROWARD	Yes *1	96,150	96,150	317,646	640	45%	11	2,512,276.00	228,388.73	1,598.72
CHARLOTTE	Yes *2	88,500	88,500	253,809	640	45%	11	1,626,927.00	147,902.45	1,035.32
CLAY	Yes	69,176	79,552	298,192	640	45%	27	4,021,547.00	148,946.19	1,042.62
COLLIER	No	104,550	104,550	415,058	640	45%	23	5,500,079.00	239,133.87	1,673.94
DUVAL	Yes	70,178	80,705	199,000	640	45%	34	4,282,555.00	125,957.50	881.70
ESCAMBIA	Yes	62,000	71,300	253,809	640	45%	45	5,042,735.00	112,060.78	784.43
GADSDEN	Yes	68,400	78,660	253,809	640	45%	5	654,523.00	130,904.60	916.33
HILLSBOROUGH	Yes	58,660	67,060	225,000	640	45%	108	18,648,225.00	172,668.75	1,208.68
INDIAN RIVER	Yes	61,900	71,185	253,809	640	45%	1	147,184.00	147,184.00	1,030.29
LEE	Yes *1	88,500	88,500	253,809	640	45%	191	30,923,179.00	161,901.46	1,133.31
LEON	Yes	68,400	78,660	253,809	640	45%	54	6,722,167.00	124,484.57	871.39
MANATEE	Yes *1	65,500	75,325	264,706	640	45%	57	9,423,063.00	165,316.89	1,157.22
MARION	Yes	59,156	68,029	253,809	640	45%	4	425,138.00	106,284.50	743.99
MARTIN	Yes	67,641	77,787	291,176	640	45%	1	108,007.00	108,007.00	756.05
MIAMI DADE	Yes	75,500	86,825	317,646	660*	45%	10	2,314,573.00	231,457.30	1,388.74
OKALOOSA	Yes	71,556	82,519	314,471	640	45%	11	1,771,666.00	161,060.55	1,127.42
PALM BEACH	Yes *2	101,850	101,850	317,646	640	45%	68	13,088,347.00	192,475.69	1,347.33
PINELLAS	Yes	70,800	82,600	255,573	660	45%	9	1,523,410.00	169,267.78	1,184.87
POLK	Yes	70,800	82,600	255,573	660	45%	10	1,752,048.00	175,204.80	1,226.43
SANTA ROSA	Yes	62,000	71,300	253,809	640	45%	5	1,844,458.00	368,891.60	2,582.24
SARASOTA	Yes *2	98,250	98,250	264,746	640	45%	33	6,264,675.00	189,838.64	1,328.87
ST JOHNS	Yes *1	96,600	96,600	303,882	640	45%	22	4,341,976.00	197,362.55	1,381.54
WAKULLA	Yes	63,900	73,485	253,809	640	45%	2	287,168.00	143,584.00	1,005.09
WALTON	Yes	70,560	82,320	314,471	640	45%	1	191,369.00	191,369.00	1,339.58
							751	\$ 124,502,930.00	\$ 165,782.86	\$ 1,158.27
*640 for Conventional Loans										
Yes *1 Permit non-first time homebuyer loans, but in past year, only one such loan has been originated in the County										
Yes *2 Permit non-first time homebuyer loans, but in past year, no such loan has been originated in the County										
BOND LOANS										
COUNTY	FIRST TIME HOMEBUYER	INCOME LIMIT		PURCHASE PRICE LIMIT	MIN FICO	MAX DTI	# OF BOND LOANS	TOTAL VOLUME	AVERAGE LOAN SIZE	AVERAGE DOC STAMP PER LOAN
LAKE	Yes	59,000	70,800	255,176	640	45%	1	\$ 166,045.00	\$ 166,045.00	\$ 1,162.32
ORANGE	Yes	59,000	70,800	255,176	640	45%	4	718,879.00	179,719.75	1,258.04
OSCEOLA	Yes	59,000	70,800	255,176	640	45%	1	166,045.00	166,045.00	1,162.32
PINELLAS	Yes	70,800	82,600	255,573	660	45%	1	235,653.00	235,653.00	1,649.57
SEMINOLE	Yes	59,000	70,800	255,176	640	45%	12	1,953,417.00	162,784.75	1,139.49
							19	\$ 3,240,039.00	170,528.37	1,193.70