

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 Community Affairs

BILL: SB 250

INTRODUCER: Senator Flores

SUBJECT: Pilot State Workforce Housing Tax Credit

DATE: February 11, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	Pre-meeting
2.			FT	
3.			AP	

I. Summary:

SB 250 creates the State Workforce Housing Tax Credit Program to stimulate creative private sector initiatives to increase the supply of workforce housing in Florida. The program incentivizes developers to construct workforce rental housing targeted to serve residents with household incomes up to 90 percent of the area median income or up to 110 percent in areas of critical state concern. Taxpayers owning an interest in an eligible housing development may apply the tax credits against the state’s corporate income tax, insurance premium tax or insurance retaliatory tax over a 10-year period. The maximum aggregate dollar amount of tax credit awards is \$50 million in each of calendar years 2020, 2021, and 2022. Awards may not be made after 2022. Florida Housing Finance Corporation will administer the pilot program.

II. Present Situation:

Florida Housing Finance Corporation

As a public corporation of the state,¹ Florida Housing Finance Corporation (Florida Housing) acts primarily as a financial institution. It utilizes federal and state resources to finance the development and preservation of affordable homeowner and rental housing and assist eligible homebuyers with financing and down payment assistance.

Housed within the Department of Economic Opportunity, Florida Housing’s powers and responsibilities are outlined in s. 420.507, F.S., and summarized below:

- To carry out analyses of housing needs within the state and ways of meeting those needs;
- To participate in federal housing programs and federal community development, insurance and guarantee programs;

¹ Chapter 97-167, Laws of Fla., created Florida Housing as a public-private entity to replace the Florida Housing Finance Agency for the ostensible purposes of reducing bureaucracy and streamlining administrative processes.

- To develop and administer the state rental and homeownership programs as outlined in Florida Statutes;
- To designate and administer private activity tax-exempt bond allocation received by Florida Housing pursuant to Part VI of ch.159, F.S., between the single family and multifamily programs;
- To set standards for and monitor compliance of residential housing financed by Florida Housing; and
- To conduct demonstration programs and projects which further the statutory purposes of Florida Housing.²

Affordable housing is defined in terms of the income of the household living in the housing. Housing is generally said to be affordable when a family is spending no more than 30 percent of its income on housing.³ On the rental side, this includes utilities, while on the homeownership side, principal, interest, taxes, and insurance are all part of the equation.⁴

Resident eligibility for Florida Housing programs is typically governed by area median income (AMI) levels.⁵ The AMI eligibility for a particular program is determined by the county or group of counties in which the property is located as well as family size.⁶ Generally speaking:

- Extremely low-income means total household income up to 30 percent of AMI;⁷
- Very low-income means total household income from 30.01 to 50 percent of AMI;⁸
- Low-income means total household income from 50.01 to 80 percent of AMI;⁹ and
- Moderate income means total household income from 80.01 to 120 percent of AMI.¹⁰

Florida Housing works with the state and a variety of additional entities to fulfill its mission. Partnering non-state entities include private lenders and investors, mortgage and bond insurers, federal agencies, for profit and nonprofit developers and property managers, local governments, public housing authorities and local housing finance authorities.¹¹

Florida Housing is eligible to receive both state and federal funding to execute its affordable housing programs. Principal state funding, if appropriated, comes from documentary stamp tax revenues distributed to the State Housing Trust Fund and the Local Government Housing Trust Fund.¹² Programs supported by the two trust funds include the State Apartment Incentive Loan

² Florida Housing is also subject to the Government-in-the-Sunshine Law, the Public Records Act, the Administrative Procedure Act, and audits by the Chief Financial Officer for the State of Florida and the State Auditor General.

³ Florida Housing Finance Corporation, *Overview of Florida Housing Finance Corporation* (November 2018) (on file with the Senate Committee on Community Affairs).

⁴ *Id.*

⁵ AMI data is determined annually by the U.S. Department of Housing and Urban Development (HUD) for every county and metropolitan area.

⁶ *See supra* note 3.

⁷ *See* s. 420.0004(9), F.S.

⁸ *See* s. 420.0004(17), F.S.

⁹ *See* s. 420.0004(11), F.S.

¹⁰ *See* s. 420.0004(12), F.S.

¹¹ *Id.*

¹² Section 201.15, F.S.

Program (SAIL),¹³ the State Housing Initiatives Partnership Program (SHIP),¹⁴ and the Affordable Housing Catalyst Program (Catalyst).¹⁵ No appropriations are made to Florida Housing from General Revenue.

SAIL provides gap financing to developers through non-amortizing, low-interest loans to leverage mortgage revenue bonds or federal Low Income Housing Tax Credit resources and obtain the full financing needed to construct affordable rental units for very low-income families. The SHIP program provides funds to all 67 counties and Florida's larger cities on a population based formula to finance and preserve affordable housing for very low, low, and moderate income families based on locally adopted housing plans. Catalyst provides on-site and telephone/e-mail technical assistance as well as training through workshops and webinars on state and federal affordable housing programs implemented in Florida.¹⁶

Pursuant to s. 420.507, F.S., Florida Housing is also authorized to receive funding directly from the federal government in connection with the corporation's programs.¹⁷ Major federal funding streams include Mortgage Revenue Bonds¹⁸ and the population-based allocation of federal Low Income Housing Tax Credits.

Federal Low Income Housing Tax Credit Program¹⁹

Through a federal population-based allocation to all states, the Low Income Housing Tax Credit (LIHTC) Program²⁰ provides rental developers with competitive 9 percent tax credits²¹ that they sell to investors²² in exchange for equity to finance the acquisition, rehabilitation, and new construction of affordable rental housing. Investors use the tax credits for a dollar-for-dollar

¹³ Section 420.5087, F.S.

¹⁴ Sections 420.907-420.9089, F.S.

¹⁵ Section 420.531, F.S.

¹⁶ Florida Housing provides significant information and data on these and its other programs on its website, available at <https://www.floridahousing.org/home>

¹⁷ See s. 420.507(33), F.S.

¹⁸ See supra note 3. Private activity tax-exempt bonds are allocated to Florida Housing pursuant to the calculation in Part VI of ch. 159, F.S., performed by the Division of Bond Finance on an annual basis. Florida Housing facilitates the issuance of bonds by serving in a conduit capacity to lend bond proceeds to multifamily developers to construct/rehabilitate rental housing serving low-income households.

¹⁹ Information in this section of the analysis not otherwise referenced is culled from Florida Housing Finance Corporation, *2017 Agency Analysis of HB 91 State Housing Tax Credit Program* (July 1, 2017) (on file with the Senate Committee on Community Affairs) and Florida Housing Finance Corporation, *Housing Credits Background*, available at <https://www.floridahousing.org/programs/developers-multifamily-programs/low-income-housing-tax-credits> (last visited Feb. 5, 2019).

²⁰ See Tax Reform Act of 1986 (P.L. 99-514).

²¹ The 9 percent credits are designed to compensate a developer for 70 percent of the building's qualified basis (construction costs) over the 10-year credit period. See Florida Housing Finance Corporation, *Overview of the State's Implementation of Rental Programs* (August 2017), available at <http://www.floridahousing.org/docs/default-source/aboutflorida/august2017/august2017/tab7.pdf> (last visited Feb. 6, 2019).

²² *Id.* According to Florida Housing, "rates recently have been ~92-97¢ on the dollar, but over time levels shift based on the financial market – e.g., lower (or impossible to sell) during the recession and higher during better times, based less on the need for affordable housing and more on the investor's tax burden."

reduction over ten years in their federal tax liability.²³ The equity infused into the housing transaction lowers the need for additional debt. Florida also receives authority to issue non-competitive housing tax credits that are awarded to developments financed with tax-exempt multifamily Mortgage Revenue Bonds.²⁴

Florida Housing administers the LIHTC Program in Florida. A Qualified Allocation Plan outlining how the credits will be used must be adopted by Florida Housing's board of directors and signed by the Governor.²⁵ Qualifying buildings for LIHTC allocations in Florida include garden, high-rise, townhouses, duplexes/quads, single family or mid-rise with an elevator. Ineligible development types include hospitals, sanitariums, nursing homes, retirement homes, trailer parks, and life care facilities. Federal LIHTC may be used in conjunction with other Florida Housing programs such as the HOME Investment Partnerships program,²⁶ SAIL, the Predevelopment Loan Program,²⁷ or the Multifamily Mortgage Revenue Bonds Program.²⁸ Florida's most recent annual 9 percent allocation for the LIHTC Program is estimated at \$57 million.²⁹

Eligibility Requirements for a LIHTC³⁰

In order to be eligible for a LIHTC allocation, developments must meet certain tests that restrict both the amount of rent that is assessed to tenants and the income of eligible tenants. The income test requires development owners to elect one of two income level thresholds, either a "20-50 test" or a "40-60 test." In order to satisfy the first test, at least 20 percent of the units must be occupied by individuals with income of 50 percent or less of AMI adjusted for family size. To satisfy the second test, at least 40 percent of the units must be occupied by individuals with income of 60 percent of AMI adjusted for family size. The 2018 Consolidated Appropriations Act (P.L. 115-141) added a third income test option that allows owners to average the income of tenants.

²³ To clarify this, consider a new affordable housing apartment complex with a construction cost (known as "qualified basis" in LIHTC parlance) of \$1 million. A 9 percent credit would generate a stream of tax credits equal to \$90,000 (9% × \$1 million) per year for 10 years, or \$900,000 in total.

²⁴ See *supra* note 21. These are commonly referred to as "4 percent credits" and represent 30 percent of a building's qualified basis (construction costs) over the 10-year credit period.

²⁵ IRC § 42(m)(1)(B). See *Florida Housing Finance Corporation 2018 Qualified Allocation Plan*, available at http://www.floridahousing.org/docs/default-source/programs/developers-multifamily-programs/competitive/2018-qualified-allocation-plan.pdf?sfvrsn=3adb097b_2 (last visited Feb. 5, 2019).

²⁶ See s. 420.5089, F.S. HOME provides low-interest or zero-interest loans to developers to finance the construction and rehabilitation of homes and rental apartments.

²⁷ See s. 420.526, F.S. The Predevelopment Loan Program provides loans to eligible organizations for predevelopment activities such as title searches, engineering fees, appraisals, feasibility analyses, and earnest money deposits.

²⁸ See s. 420.509, F.S. The Multifamily Mortgage Revenue Bond Program uses both taxable and tax-exempt bonds to provide below market rate loans to developers who set aside a certain percentage of their apartments for low-income families.

²⁹ Florida Housing Finance Corporation, *How the Low-Income Housing Tax Credit (LIHTC) Process Works in Florida and Comparison to the Proposed State Housing Tax Credit* (Jan. 29, 2019) (on file with Senate Committee on Community Affairs).

³⁰ See IRC §42(g)(1).

The LIHTC Allocation Process³¹

Florida Housing awards allocations of competitive 9 percent LIHTC through a competitive Request for Application (RFA) allocation process pursuant to Florida Administrative Code Rule 67-60. After Florida Housing's board of directors makes a preliminary award, additional steps in the process include credit underwriting, a comprehensive market study, and the execution of a carryover allocation (in essence, a reservation) by Florida Housing. A carryover allocation spells out the requirements that the developer must meet and the timeframes for meeting them and "guarantees" the credit to the project for two years. All the buildings in the proposed development must be placed in service (i.e., a certificate of occupancy has been issued by the governing local jurisdiction) no later than the end of the second calendar year following the calendar year in which the carryover agreement was fully executed.³²

Claiming a LIHTC

Pursuant to IRS Code, a LIHTC for a building cannot be claimed by the taxpayer for tax purposes until the month after a certificate of occupancy is issued and all housing credit-restricted units in a particular building have been initially occupied by housing credit-qualified households.³³ Additionally, the developer must complete a final cost certification deemed acceptable by Florida Housing prior to the issuance of final documentation of the delivery of the tax credits to the applicant.³⁴ Upon satisfaction of these requirements, Florida Housing issues IRS Form 8609 for the building(s) which represent the delivery of the actual housing tax credits to the applicant.

LIHTC Compliance

The compliance period for LIHTC developments is 15 years beginning with the first year of the tax credit period.³⁵ Developments comply with federal LIHTC requirements to avoid recapture of tax credits. An extended use period restricts the eligibility of developments to receive an allocation of tax credits to only those developments that agree to keep the property income- and rent-restricted for an extended period of time. The term for this period is a minimum of 15 years in addition to the normal 15-year compliance period resulting in a total term of compliance period of 30 years.³⁶ States may add additional affordability restrictions. Florida's compliance period is a total of 50 years which includes the federal 30-year period.³⁷

State Housing Tax Credit Program³⁸

Sections 420.5093 and 220.185, F.S., work in tandem to provide for the State Housing Tax Credit (SHTC) Program for purposes of increasing the supply of affordable housing in urban

³¹ See *supra* note at 29.

³² For example, if a carryover agreement was fully executed at any time during 2019, all of the buildings in a development must be placed in service by 12/31/2021.

³³ See IRC §42(i)(3)(A) and Department of Treasury, Internal Revenue Service, *Disposition Guide for Completing Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building*.

³⁴ IRC §42(m)(2).

³⁵ IRC §42(i)(1). The first year is either the year placed in service year or subsequent year if a deferral was elected.

³⁶ I.R.C. §42(h)(6)(D)

³⁷ See *supra* note 29.

³⁸ The Workforce Housing Tax Credit Pilot Program provided for in SB 250 is independent of this existing State Housing Tax Credit Program.

areas of the state. Unlike the federal LIHTC Program which is exclusively for rental development, the SHTC Program may be used for single family development, commercial facilities associated with housing and, more generally, allows for mixed use projects.³⁹ Additionally, Florida Statutes provide for the credit to be used in urban areas, rather than throughout the state as allowed by the federal LIHTC.⁴⁰

Similar to the LIHTC Program, the SHTC Program allows for credits of up to 9 percent for designated projects. The total tax credits allocated is defined as the total credits pledged over a 5-year period for all projects. Florida Housing is authorized to establish procedures for the allocation and distribution of the SHTC Program.⁴¹ Florida Housing must prepare an annual plan, which must be approved by the Governor, containing general guidelines for the SHTC Program.⁴²

The total amount of credits allocated for all projects may not exceed the amount appropriated for the SHTC Program in the General Appropriations Act.⁴³ Established in 1999,⁴⁴ the SHTC Program received an initial General Revenue appropriation of \$2.5 million.⁴⁵ No credits were issued that year and therefore no appropriated funds were utilized. According to Florida Housing, the SHTC has received no additional appropriations since 1999.⁴⁶

Definitions of Workforce Housing and Essential Personnel Services

As used in the Community Workforce Housing Innovation Pilot Program provided by ch. 2006-69, Laws of Florida, “workforce housing” means housing affordable to natural persons or families whose total annual household income does not exceed 140 percent of AMI, adjusted for household size, or 150 percent of AMI, adjusted for household size, in areas of critical state concern⁴⁷ designated under s. 380.05, F.S., for which the Legislature has declared its intent to provide affordable housing.⁴⁸

Proviso language in recent General Appropriations Acts has dedicated SAIL funding to construct workforce housing to primarily serve low-income persons as defined in s. 420.0004, F.S.⁴⁹ This low-income persons definition for workforce housing stipulates that total household income does not exceed 80 percent of AMI within the state or within the county, whichever is greater.

³⁹ Sections 420.5093(2) and (3), F.S.

⁴⁰ Sections 420.5093 (1) and (3), F.S.

⁴¹ Section 420.5093(2), F.S.

⁴² *Id.*

⁴³ Section 220.185(2)(b), F.S.

⁴⁴ Chapter 99-378, ss. 19-20, Laws of Fla.

⁴⁵ Chapter 99-378, s. 26, Laws of Fla.

⁴⁶ *See supra* note 19.

⁴⁷ Section 380.0552, F.S., designates the Florida Keys as an area of critical state concern, and includes legislative intent to provide affordable housing in close proximity to places of employment in the Florida Keys. Section 380.0555, F.S., provides a like designation and affordable housing legislative intent to the Apalachicola Bay Area.

⁴⁸ Section 420.5095(1)(a), F.S. Per the subsection, the intent to provide affordable housing also applies to areas that were designated as areas of critical state concern for at least 20 consecutive years prior to removal of the designation

⁴⁹ *See* Proviso Specific Appropriation 2223, Chapter 2016-66, Laws of Fla.; Proviso Specific Appropriation 2225, Chapter 2017-70, Laws of Fla.; and Proviso Specific Appropriation 2225, Chapter 2018-9, Laws of Fla.

“Essential services personnel” is defined within the SHIP program.⁵⁰ Section 420.9075(3)(a), F.S., requires each SHIP local housing assistance plan to include a definition of essential service personnel for the county or eligible municipality, including, but not limited to, teachers and educators, other school district, community college, and university employees, police and fire personnel, health care personnel, skilled building trades personnel, and other job categories.

Florida’s Corporate Income Tax⁵¹

Certain corporations doing business in Florida must pay tax of 5.5 percent on income earned in Florida. Florida “piggybacks” the federal income tax code in its determination of taxable income. Taxable income earned by corporations operating in more than one state is taxed in Florida on an apportioned basis using a formula based 25 percent on property, 25 percent on payroll, and 50 percent on sales. The first \$50,000 of net income is exempt, effective with tax years beginning January 1, 2013.

The Revenue Estimating Conference estimates Fiscal Year 2018-2019 gross corporate income tax collections of approximately \$2.448 billion.⁵² A number of credits against Florida corporate income tax liability are authorized in statute. A sampling of these and the Revenue Estimating Conference’s estimated valuation of the credits in Fiscal Year 2018-2019⁵³ include:

- Credit for contributions to eligible nonprofit scholarship-funding organizations⁵⁴ (\$201 million);
- The capital investment tax credit⁵⁵ (\$31.8 million);
- The research and development tax credit⁵⁶ (\$13 million); and
- The corporate income tax credit for spaceflight projects⁵⁷ (\$10.0 million).

Florida’s Insurance Premium Tax and Retaliatory Provision

Chapters 624 and 625, F.S., govern insurance premium taxes in Florida. Insurance premium taxes are imposed on insurance premiums and paid by insurance companies at the following rates: 1.75 percent on gross premiums minus reinsurance and return premiums; 1 percent on annuity premiums; and 1.6 percent on self insurers.⁵⁸

⁵⁰ The State Housing Initiatives Partnership program provides funds to local governments on a population based formula as an incentive to produce and preserve affordable housing for very-low, low- and moderate –income families. *See* Chapter 420, Part VII, F.S.

⁵¹ The summary information in this section of the analysis is drawn from the Florida Revenue Estimating Conference’s, *2018 Florida Tax Handbook*, 58-65, available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2018.pdf> (last visited Feb. 4, 2019).

⁵² *Id.* at 58.

⁵³ *Id.* at 63.

⁵⁴ Section 220.1875, F.S.

⁵⁵ Section 220.191, F.S.

⁵⁶ Section 220.196, F.S.

⁵⁷ Section 220.194, F.S.

⁵⁸ *See* sections 624.509(1), F.S., 624.4621, F.S., and 624.509(1), F.S.

The state's insurance retaliatory taxes⁵⁹ are determined and assessed on the basis of "what if" a Florida-domiciled insurer were licensed and doing business in the insurer's state of domicile and providing the same insurance products as the foreign insurer is writing in Florida.⁶⁰

Insurance premium tax revenue is distributed to the Municipal Firefighters' Pension Fund⁶¹ and the Municipal Police Officers' Retirement Fund,⁶² the Insurance Regulatory Trust Fund,⁶³ and the General Revenue Fund.⁶⁴ The Revenue Estimating Conference estimates Fiscal Year 2018-2019 insurance premium tax collections of \$777.2 million; distributions are projected as \$537.1 million to the General Revenue Fund, \$187.5 million to Firefighters' and Police Trust Funds, and \$38.8 million to the Insurance Regulatory Trust Fund.⁶⁵

Among the credits that may be applied against insurance premium taxes are those for workers' compensation assessments,⁶⁶ the Municipal Firefighter Pension Fund,⁶⁷ the Municipal Police Officer's Pension Fund,⁶⁸ insurer employee's salaries,⁶⁹ and contributions for nonprofit scholarship-funding organizations.⁷⁰

III. Effect of Proposed Changes:

The bill creates ss. 220.1855 and 420.5096, F.S., to establish the State Workforce Housing Tax Credit Program in an effort to stimulate creative private sector initiatives to increase the supply of workforce housing in the state. Under the program, taxpayers owning an interest in newly-constructed workforce rental housing developments may qualify for a tax credit to be claimed against any corporate income tax due under ch. 220, F.S.

To qualify for the tax credit, at least 60 percent of the units in a proposed workforce housing development must be rent-restricted⁷¹ and the total household income of renters of the units may not exceed 90 percent of AMI. This income limitation rises to 110 percent of AMI if the development is in specified designated areas of critical state concern under s. 380.05, F.S. An eligible workforce housing development must set aside at least 30 percent of units for families defined as essential services personnel,⁷² and must demonstrate that for every \$1 in tax credits

⁵⁹ Section 624.5091, F.S.

⁶⁰ Florida Senate Committee on Finance and Tax, *An Overview of Florida's Insurance Premium Tax*, Report Number 2007-122 (Oct 2006), available at http://archive.flsenate.gov/data/Publications/2007/Senate/reports/interim_reports/pdf/2007-122ftlong.pdf (last visited Feb. 5, 2019).

⁶¹ Section 175.121(1), F.S.

⁶² Section 185.10(1), F.S.

⁶³ Section 624.523(1), F.S.

⁶⁴ Section 624.509(3), F.S.

⁶⁵ See *supra* note 51 at 110.

⁶⁶ Section 440.51, F.S.

⁶⁷ Section 175.141, F.S.

⁶⁸ Section 185.12, F.S.

⁶⁹ Sections 624.509(5)-(6), F.S.

⁷⁰ Section 624.51055, F.S.

⁷¹ The gross rent for a residential unit may not exceed 30 percent of the "imputed income limitation applicable to the unit" which relates to the number of individuals and bedrooms in a unit.

⁷² Section 420.5095(3), F.S., defines "essential services personnel" as persons in need of affordable housing who are employed in occupations or professions in which they are considered essential services personnel, as defined by each county and eligible municipality within its respective local housing assistance plan pursuant to s. 420.9075(3)(a).

granted, the state will accrue benefits of at least \$1 in total development costs. Additionally, an eligible workforce housing development must have an “extended workforce housing commitment”⁷³ in effect as of the end of each calendar year for which the credit is sought.

The bill requires 50 percent of the tax credits awarded under the program to be set aside for developments that produce units affordable to persons whose total household income is between 60 and 90 percent of AMI.

A State Workforce Housing Tax Credit may not exceed 9 percent of a development’s “qualified basis”⁷⁴ and are claimed annually in one-tenth increments over a 10-year period, subject to a carry forward provision that permits unused credit amounts to be claimed within an 11-year period. Owners of a partnership, limited liability company, S corporation, or similar pass-through entity may allocate the annual credit amount among its partners, shareholders, members or other taxpayers. Credit recapture provisions apply if the year-over-year amount of qualified basis decreases. The maximum aggregate dollar amount of tax credit awards is \$50 million in each of calendar years 2020, 2021, and 2022. Awards may not be made after 2022.

Florida Housing will administer the State Workforce Housing Tax Credit Program. Among its responsibilities in administering the program, Florida Housing must:

- Determine which workforce housing developments are eligible for the tax credit;
- Establish procedures to award and distribute the tax credit;
- Prepare an annual plan with general guidelines for awarding a tax credit;
- Establish procedures for a development cost certification process;
- Issue “eligibility statements” to qualified tax credit applicants indicating, among other information, the year in which the development was complete and the tax credit amount approved;
- Transmit required information to the Department of Revenue (DOR); and
- Establish procedures for monitoring eligible workforce housing developments’ compliance with the program requirements and notify the DOR of any non-compliance;

Florida Housing must adopt rules necessary to administer the program. The bill provides that provisions of section 42 of the Internal Revenue Code, relating to the federal Low Income Housing Tax Credit, apply to the State Workforce Housing Tax Credit created in the bill, but in the event of any inconsistencies, the proposed s. 220.1855, F.S., prevails.

Finally, the bill creates s. 624.51056, F.S., to provide that the State Workforce Housing Tax Credit also applies against the insurance premium tax due under s. 624.509(1), F.S., and the retaliatory tax due under s. 624.5091, F.S. The State Workforce Housing Tax Credit may be applied to the insurance tax liability only after the following existing deductions are made:

⁷³ This commitment means an agreement between the taxpayer and Florida Housing which is substantially similar to the agreement specified in 26 U.S.C. s. 42(h)(6)(B). This essentially requires an extended period, beyond the 10-year compliance period in the bill, in which a development must remain income- and rent-restricted.

⁷⁴ The qualified basis of an eligible workforce housing development means the eligible basis (eligible construction costs) multiplied by the applicable fraction (percentage of units in a development that are “workforce housing units”). Qualified basis is, essentially, the total amount of development cost that is dedicated to workforce housing.

- Assessments made pursuant to s. 440.51, F.S., for administrative expenses related to workman's compensation;
- The credits for taxes paid under ss. 171.101 and 185.08, F.S., for pension trust funds for firefighters' and police officers' respectively;
- The credits for income taxes paid under ch. 220, F.S., for corporate income tax;
- The credit allowed under s. 624.509(5), F.S., for insurer salaries as such credit is limited by s. 624.509(6), F.S.; and
- The credit allowed under 624.51055, F.S., for contributions to nonprofit scholarship-funding organizations.

The bill specifies that an insurer claiming a credit against the insurance premium tax liability is not required to pay any additional retaliatory tax.

The bill takes effect on July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The program established in the bill creates a new State Workforce Housing Tax Credit which may be applied against the state's corporate income tax, insurance premium tax, and insurance retaliatory tax. The maximum aggregate dollar amount of tax credit awards is set at \$50 million for each of calendar years 2020, 2021, and 2022. Credits may not be awarded after 2022. The Revenue Estimating Committee has not yet determined the fiscal impact of the bill.

B. Private Sector Impact:

The tax credits will provide developers with an additional financial equity instrument to help fund workforce housing in the state.

C. Government Sector Impact:

Florida Housing and the DOR will incur costs related to their new responsibilities for allocating credits and administering the program.

VI. Technical Deficiencies:

Florida Housing and the DOR indicated certain implementation, administration, and enforcement concerns with the bill as currently written.⁷⁵

Florida Housing noted complexities in ensuring that State Housing Workforce Tax Credits used in conjunction with federal tax credits are compatible with various IRS Code requirements that govern federal credits. Florida Housing also requested clarity on their role and authority to establish procedures and guidelines to implement the program in a timely fashion so as to begin making awards beginning in the 2020 taxable year.

Many of DOR's comments related to the format and mechanics of how Florida Housing would report to the DOR. Clarity was also sought on interpretation of appropriate taxable years to claim credits, the meaning of owning an interest in a development, and assuring the confidentiality of financial information transmitted to the Department.

Both Florida Housing and the DOR provided remedies to address concerns they identified.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 220.1855, 420.5096, 624.51056.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

⁷⁵ Florida Housing Finance Corporation, *SB250 Pilot Workforce Housing Tax Credit: FHFC Comments-Questions and How the Low-Income Housing Tax Credit (LIHTC) Process Works in Florida and Comparison to the Proposed State Housing Tax Credit* (Jan. 29, 2019); Florida Department of Revenue, *2019 Agency Legislative Bill Analysis: SB 250 Pilot Workforce Housing Tax Credit* (Jan. 23, 2019) (both on file with Senate Committee on Community Affairs).

B. Amendments:

None.

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