

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/HB 137 Florida Housing Finance Corporation Revenue Bonds

**SPONSOR(S):** Appropriations Committee, Roth

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 196

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**FINAL HOUSE FLOOR ACTION:** 113 Y's 0 N's **GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

CS/HB 137 passed the House on March 9, 2022, as CS/SB 196 as amended. The Senate refused to concur in the House amendment to the Senate Bill on March 10, 2022, and returned the bill to the House. The House receded and passed the Senate bill on March 10, 2022.

The bill amends s. 420.509, F.S., to designate the Florida Housing Finance Corporation as the state fiscal agency to make the determinations required by s.16, Article VII of the State Constitution, in connection with the issuance of Florida Housing bonds, and removes the authority of the State Board of Administration (SBA) to authorize an interest rate in excess of the maximum. To conform to this change, the bill also removes a reference to SBA rules in the statute governing Florida Housing's Guarantee Program.

The bill amends ss. 420.503 and 420.5099, F.S., creating definitions and regulations related to the qualified contract process by which Florida Housing seeks a purchaser for an affordable housing development. The bill prescribes what happens to the affordable housing development's extended use period if a qualified contract does not close. If the reason is generally due to actions by the owner, then the extended use period continues. If contract does not close for other reasons, and Florida Housing is unable to find another purchaser within a 1-year period, then the extended use period ends.

The bill amends s. 420.5087(3)(e), F.S., relating to the the Elderly Housing Community Loan Program, to repeal certain requirements for these loans. The bill preserves the requirement that a certain amount of money be set aside for loans related to building preservation, health, life safety, and sanitation repairs and improvements, but removes statutory guidelines for the terms and requirements related to those loans.

The bill does not appear to have a fiscal impact on state or local governments.

The bill was approved by the Governor on June 20, 2022, and will become effective on July 1, 2022.

### I. SUBSTANTIVE INFORMATION

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

**STORAGE NAME:** h0137z1.DOCX

**DATE:** 6/23/2022

## A. EFFECT OF CHANGES:

### Present Situation

#### Florida Housing Finance Corporation

The Florida Housing Finance Corporation (Florida Housing) is a public corporation created by the Legislature to assist in providing a range of affordable housing opportunities for Florida residents. Florida Housing administers federal and state resources to make loans and guarantees of loans and to issue bonds to finance the development and preservation of affordable homeowner and rental housing and assist homebuyers with financing and down payment assistance.<sup>1</sup>

#### Florida Housing Bonds

Florida Housing facilitates the issuance of bonds by serving in a conduit capacity. Each bond indenture is for a single purpose entity and the bonds are secured solely by the revenues, assets and guarantees associated with each bond.<sup>2</sup> The bonds are not an obligation of the state as they are not secured by the full faith and credit of the state.<sup>3</sup>

Section 420.509, F.S., designates the State Board of Administration (SBA) as the state fiscal agency to make the determinations required by s. 16, Article VII of the State Constitution, in connection with the issuance of Florida Housing bonds. The required fiscal determination is that in no state fiscal year will the debt service requirements of the bonds proposed to be issued, and all other bonds secured by the same pledged revenues, exceed the pledged revenues available for such debt service requirements. This section also authorizes Florida Housing to bear interest on the bonds that are issued. However, the rate or rates may not exceed the interest rate limitation set forth in s. 215.84, F.S., unless authorized by the SBA.<sup>4</sup>

Before a bond is issued, Florida Housing's Board of Directors must approve the requirements for a bond financed development. Upon the Board's approval, a cash flow analysis is prepared and submitted to the SBA for approval of fiscal determination. Once the cash flow analysis is received, the Governor, Chief Financial Officer (CFO), and Attorney General, functioning as the SBA Board of Trustees, place the report on the agenda of the next scheduled meeting for the SBA Board of Trustees. Upon approval by the SBA Board of Trustees, the bond transaction can proceed to closing.

#### Florida Affordable Housing Guarantee Program

The Florida Affordable Housing Guarantee Program (Guarantee Program or Program) was created in 1992 by the Legislature. The purpose of the Guarantee Program is to stimulate private sector lending in an effort to overcome the lack of available credit enhancement for the production of affordable housing in Florida and, in turn, reduce the cost of financing housing projects.<sup>5</sup>

The cost savings are achieved by the Guarantee Program guaranteeing the payment of obligations made to finance or refinance the purchase, construction, or rehabilitation of eligible housing.<sup>6</sup> This

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<sup>1</sup> Florida Housing Finance Corporation, *Overview of Florida Housing Finance Corporation*, available at <https://www.floridahousing.org/docs/default-source/aboutflorida/august2017/august2017/tab8.pdf> (last visited March 14, 2022).

<sup>2</sup> Affordable Housing Workgroup, *Overview of the State's Implementation of Rental Programs*, available at <https://www.floridahousing.org/docs/default-source/aboutflorida/august2017/august2017/tab7.pdf> (last visited March 14, 2022). Chapter 2017-71, Laws of Fla., established the Workgroup to develop recommendations to address the state's affordable housing needs.

<sup>3</sup> Sections 420.509(15) and 420.51, F.S., and s. 16, Art. VII, Florida Constitution.

<sup>4</sup> Section 420.509(4), F.S.

<sup>5</sup> Florida Housing Finance Corporation, *Guarantee Program*, available at <https://www.floridahousing.org/programs/developers-multifamily-programs/guarantee-program> (last visited March 14, 2022); section 420.5092, F.S.

<sup>6</sup> Section 420.5092, F.S.

includes guaranteeing mortgages that secure multifamily mortgage revenue bonds.<sup>7</sup> Florida Housing uses proceeds from the issuance of bonds to establish a “guarantee fund” to guarantee the payment of such obligations.<sup>8</sup> Current law defines the guarantee fund, as the Affordable Housing Guarantee Fund created and established with proceeds of revenue bonds issued by Florida Housing to implement the Florida Affordable Housing Guarantee Program.<sup>9</sup>

When combined with bond insurance, Guarantee Program enhanced securities typically received a “AAA” rating.<sup>10</sup> The ratings are given by independent rating classification services, such as Standard & Poor’s, to rate a company’s fiscal soundness and strength and its ability to pay claims.<sup>11</sup> A “AAA” rating is typically the strongest financial strength rating.<sup>12</sup>

Under current law, if the claims payment obligations under the affordable housing guarantees from amounts on deposit in the guarantee fund would cause the claims-paying rating assigned to the guarantee fund to be less than the third-highest rating classification on any nationally recognized rating service, which classifications being consistent with s. 215.84(3), F.S., and rules adopted by the SBA, Florida Housing must certify to the CFO the amount of such claims payment obligations.<sup>13</sup> Upon receipt of certification, the CFO must transfer to the guarantee fund the amount certified as necessary to meet such obligations.<sup>14</sup>

### Qualified Contract Process

Of the affordable housing financing options provided by the federal government, Low Income Housing Tax Credits (LIHTC)<sup>15</sup> are among the most commonly used. When a property is financed using LIHTC the federal government typically requires the property be utilized for affordable housing for at least 30 years.<sup>16</sup> This time period is divided into the first 15 years, the “initial compliance period,” and the rest, an “extended use period.”

After 14 years the owner of an affordable housing development may request that Florida Housing seek a purchaser who will continue to operate the affordable portions of the development as affordable housing – this is referred to as the “qualified contract process.” Many developments, particularly those that receive the most lucrative LIHTC, waive the right to enter this process when contracting with Florida Housing for the credits and must remain affordable housing for the duration of the agreed upon time. After a developer requests a qualified contract, if Florida Housing is unable to present a buyer

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<sup>7</sup> Florida Housing Finance Corporation, *Guarantee Program*, available at <https://www.floridahousing.org/programs/developers-multifamily-programs/guarantee-program> (last visited March 14, 2022).

<sup>8</sup> Section 420.5092(2)(e), F.S.

<sup>9</sup> *Id.*

<sup>10</sup> Having a “AAA” or strong financial rating, helps lower the overall cost of borrowing, which ultimately allows for a reduction in the rents to individual earning lower incomes. *Guarantee Program*, FLORIDA HOUSING FINANCE CORPORATION, available at <https://www.floridahousing.org/programs/developers-multifamily-programs/guarantee-program> (last visited March 14, 2022).

<sup>11</sup> Intro to Credit Ratings, S&P GLOBAL, available at <https://www.spglobal.com/ratings/en/about/intro-to-credit-ratings> (last visited March 14, 2022).

<sup>12</sup> Understanding Credit Ratings, S&P GLOBAL, available at <https://www.spglobal.com/ratings/en/about/understanding-credit-ratings> (last visited March 14, 2022).

<sup>13</sup> Section 420.5092(6)(b), F.S.

<sup>14</sup> Section 420.5092(6)(b), F.S., requires the CFO upon receipt of certification to transfer funds to the guarantee fund from the first available taxes distributed to the State Housing Trust Fund pursuant to s. 201.15(4)(c) and (d), F.S., during the ensuing state fiscal year.

<sup>15</sup> Low Income Housing Tax Credits are provided by the federal government to rental housing developers in exchange for a commitment to provide affordable rents and are usually sold to investors to raise project equity. The LIHTC program is governed by the U.S. Department of Treasury and Florida’s allocation is administered by Florida Housing. Under the LIHTC program, successful applicants are provided with a dollar-for-dollar reduction in federal tax liability in exchange for the development or rehabilitation of units to be occupied by very low- and low-income households. See Florida Housing Finance Corporation, *Housing Credits*, available at <https://www.floridahousing.org/programs/developers-multifamily-programs/low-income-housing-tax-credits> (last visited March 14, 2022).

<sup>16</sup> Internal Revenue Code Section 42(h)(6)(A).

during the subsequent 1- year period, the extended use period of the property as affordable housing will end and the property can be utilized for market-rate housing.<sup>17</sup>

This “qualified contract process” relies on Florida Housing marketing the property and returning to the owner with a “bona fide contract,” showing that Florida Housing has found a buyer in order to maintain the affordable housing requirement. The “bona fide contract” is an offer to purchase an affordable housing development for a price equal to or exceeding the qualified contract amount (or purchase price) that is made by a purchaser with the intent that the offer will result in the execution of a valid and binding contract.<sup>18</sup> The price for the affordable housing portion of the sale is set according to a formula designed to give the owner an inflation adjusted return on its original equity contribution.<sup>19</sup> This calculation may result in a price that exceeds the market price of the development as affordable housing.

The bona fide contract, as provided by Florida administrative rule is, a contract for sale that:<sup>20</sup>

- Is signed by the purchaser;
- Provides that the acceptance of the contract is contingent upon approval by Florida Housing;
- Requires an initial earnest money deposit from the purchaser of \$50,000 to be made with an escrow agent; and
- Obligates the purchaser to make a second earnest money deposit equal to 3 percent of the qualified contract price to be deposited within 15 business days of the end of the due diligence period.

The initial and second earnest money deposits are not refundable unless the seller fails to deliver insurable title or defaults. A contract that meets these terms is deemed a qualified contract and Florida Housing is deemed to have met its responsibility to present the owner with a qualified contract.<sup>21</sup>

If Florida Housing is able to procure a purchaser and present the owner with such a bona fide contract within the 1-year period, regardless of whether the owner accepts, rejects, or fails to act upon the contract, the property will continue to be subject to its extended use agreement as affordable housing. If the owner accepts the offer, the property will be sold to the purchaser. If the owner rejects the offer or fails to act upon the offer, the owner will continue to be subject to the extended use agreement and cannot submit another qualified contract request for the development.<sup>22</sup>

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<sup>17</sup> 26 U.S.C. 42(h)(6)(E)(i)(II).

<sup>18</sup> Fla. Admin. Code R. 67-48.031(3).

<sup>19</sup> 26 U.S.C. 42(h)(6)(F).

<sup>20</sup> Fla. Admin. Code R. 67-48.031(3).

<sup>21</sup> Fla. Admin. Code R. 67-48.031.

<sup>22</sup> Fla. Admin. Code R. 67-48.031(11).

## State Apartment Incentive Loan (SAIL) Program

The SAIL Program is administered by Florida Housing and provides low-interest loans on a competitive basis to multifamily affordable housing developers.<sup>23</sup> These funds often serve to bridge the gap between the development's primary financing and the total cost of the development. SAIL dollars are available for developers proposing to construct or substantially rehabilitate multifamily rental housing.<sup>24</sup>

## Elderly Housing Community Loan Program

During the first six months of funding availability each year, program funds are made available for developers who provide set-asides for certain tenant groups. Included among these are elderly persons. The Elderly Housing Community Loan Program program offers up to \$750,000 in loans to make substantial life, safety, or security related improvements to existing affordable rental housing for the elderly. Unused funds designated for Elderly Housing Community Loan Program return to the SAIL program.<sup>25</sup>

Loans made through this program must meet several statutory requirements. Recipients must commit to matching at least 5 percent of the loan amount and have the primary mortgagee review and approve the developer's application for this loan. Florida Housing establishes the interest rate, which may not exceed 3 percent, and the loan term, which may not exceed 15 years<sup>26</sup> and is based on a credit analysis of the applicant. The corporation may forgive indebtedness for a share of the loan attributable to the units in a project reserved for extremely-low-income elderly by nonprofit organizations where the project has provided affordable housing to the elderly for 15 years or more. A nonprofit organization or sponsor may not use the proceeds of the loan to pay for administrative costs, routine maintenance, or new construction.

## **Effect of the Bill**

### Bond Issuance

The bill amends s. 420.509, F.S., to designate Florida Housing as the state fiscal agency to make the determinations required by s. 16, Article VII of the State Constitution, in connection with the issuance of Florida Housing bonds, and removes the authority of the SBA to authorize an interest rate in excess of the maximum.

The bill removes the requirement that the claims-paying rating classification be consistent with rules adopted by the SBA.

### Qualified Contract Process

The bill changes the process for qualified contracts for affordable housing projects.

The bill amends s. 420.503, F.S., to define the terms "bona fide contract" and "qualified contract." These definitions exist currently only in administrative rule.

Generally under current law, the "bona fide contact" is an offer to negotiate the purchase of a development in order to maintain its affordable housing status. The bill changes this administrative definition to mean "a certain and unambiguous offer to purchase the development, for an amount

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<sup>23</sup> Section 420.5087, F.S

<sup>24</sup> Florida Housing Finance Corporation, *State Apartment Incentive Loan*, available at <https://floridahousing.org/programs/developers-multifamily-programs/state-apartment-incentive-loan> (last visited March 14, 2022)

<sup>25</sup> Section 420.5087(3)(e), F.S.

<sup>26</sup> Unless the Florida Housing's lien under the loan would be subordinate to another mortgage lien, in which case the term may be the same as the longest term of the superior lien.

equaling or exceeding the qualified contract purchase price which is made in good faith by the qualified purchaser with the intent that such offer results in the execution of an enforceable, valid, and binding contract.”

The bona fide contract must include:

- An initial, nonrefundable earnest money deposit from the purchaser of \$50,000 to be made with an escrow agent, unless waived by the seller; and
- Obligating the purchaser to make a second, nonrefundable earnest money deposit equal to 3 percent of the qualified contract price to be deposited within 15 business days of the end of the due diligence period, unless waived by the seller and subject to rights reserved by the purchaser in the event of seller failure to deliver insurable title or default.

Under the bill, similar to the administrative rule, the initial and second earnest money deposits are nonrefundable. However, under the bill the bona fide contract can include a provision that allows the initial and second earnest money deposits to be refundable:

- If the seller fails to deliver insurable title at closing;
- If the seller terminates a fully executed contract due to a reason other than default of the purchaser (it is unclear if the “fully executed contract” refers to the bona fide contract or another contract, like the qualified contract discussed below);
- As provided in the contract; or
- If the owner defaults.

The changes from current administrative definitions also allow the waiver of the requirements to place the initial and second earnest money deposits in escrow and allow such deposits to be refunded for additional reasons.

The bill defines “qualified contract” as having “the same meaning as in 26 U.S.C. s. 42(h)(6)(F) in effect on the date of the preliminary determination certificate for the low-income housing tax credits for the development that is the subject of the qualified contract request, unless the Internal Revenue Code requires a different statute or regulation to apply to the development.” The definition requires Florida Housing to deem a bona fide contract to be a qualified contract at the time the second earnest money deposit is deposited in escrow in accordance with the terms of the bona fide contract and, in such event, Florida Housing is deemed to have fulfilled its responsibility to present the owner with a qualified contract.

The terms created by the bill appear to contain an element of circularity, in that the term “bona fide contract” means an offer to purchase the development for a certain amount related to a “qualified contract”; and the term “qualified contract” includes within the meaning that a bona fide contract is deemed a qualified contract when certain actions occur.

The bill amends s. 420.5099, F.S., related to allocation of low-income housing tax credits, to determine what happens to the extended use agreement, that is the affordability period, in the event that a qualified contract does not close.

Under the bill, if a qualified contract fails to close due to (1) a default of the owner, (2) the termination by the owner due to a reason other than the purchaser’s default, or (3) as otherwise provided for in the bona fide contract, then the development must remain subject to the extended use agreement and the owner is considered to have waived all rights to a qualified contract request. If a qualified contract fails to close for any other reason, the qualified contract process continues and Florida Housing must continue to seek valid offers through the 1-year period. If no other qualified contract is presented to the owner during the 1-year period, the project must be treated as if no qualified contract had been presented, and the extended use period is terminated. In effect, this would end the affordability of the housing and allow the units to be provided at market rate.

#### Elderly Housing Community Loan Program

The bill amends s. 420.5087(3)(e), F.S., which deals with the Elderly Housing Community Loan Program, to repeal certain requirements for these loans. The bill preserves the requirement that a certain amount of money be set aside for loans related to building preservation, health, life safety, and sanitation repairs and improvements, but removes statutory guidelines for the terms and requirements related to those loans.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### A. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

By repealing the limit on the amount of the loan, it is possible that larger loans could be made leading to more repairs for this type of housing; however the size of the loans may in turn limit the number of developments that can be repaired in any given year. The effect on the repair and improvement of current developments with set-asides for the elderly is unknown.

The change of the definitions and application of the bona fide contract and the qualified contract may benefit owners of affordable housing developments that are at their 14-year periods of affordability. The provisions may make it easier for the owner to divest itself of an affordable housing development. This may limit the amount of affordable housing units available in the future.

### B. FISCAL COMMENTS:

The changes in the bill to the bona fide contract and qualified contract process may result in more owners entering the process, requiring Florida Housing to incur additional administrative costs in order to find purchasers and eligible offers.