



# The Florida Senate

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Committee on Community Affairs

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## **REVIEW OF CHAPTERS 420, 421, 422 AND 423, F.S., RELATING TO HOUSING, PUBLIC HOUSING AUTHORITIES, THE HOUSING COOPERATION LAW, AND TAX EXEMPTION OF HOUSING AUTHORITIES**

### **Issue Description**

Chapter 420, F.S., consists of seven parts that contain the State Housing Strategy Act, the Housing Development Corporation of Florida, the Low-Income Emergency Home Repair Program, the Neighborhood Housing Services Act, the Florida Housing Finance Corporation Act, the Affordable Housing Planning and Community Assistance Act, and the State Housing Partnership Act.

Chapter 421, F.S., contains two parts that govern public housing authorities and the relocation of displaced persons. Chapter 422, F.S., contains the housing cooperation law and provides that the Department of Community Affairs is the agency of state government responsible for the state's role in housing and urban development. Chapter 423, F.S., contains the tax exemption for housing projects of housing authorities. Each housing authority project and all property of the housing authority that is used for or in connection with or appurtenant to the project, is exempt from all taxes and special assessments of the state or any city, town, county, or political subdivision of the state. The housing authority may agree to make payment to the state, city, county, or political subdivision for services, improvements, or facilities furnished by the state, city, county, or political subdivision.

The purpose of this project is to review the four chapters to determine if there are outdated or duplicative provisions that need to be repealed or modified.

### **Background**

#### **Department of Community Affairs – ch. 420, F.S.**

The Department of Community Affairs is created in s. 20.18, F.S., which provides that the head of the department is the Secretary of Community Affairs who is appointed by the Governor and confirmed by the Senate. The department is designated by law as the state's land planning agency,<sup>1</sup> and also is the agency responsible for the state's role in housing and urban development.<sup>2</sup> The department is divided into the Division of Community Planning, the Division of Housing and Community Development, and the Division of Emergency Management.<sup>3</sup> The Division of Housing and Community Development administers the department's statutory responsibilities for affordable housing which include, but are not limited to, the following:

- Coordinating state programs with local activities and federal initiatives;
- Incorporating specific goals, objectives, and strategies to implement the state's housing policy within the agency's strategic plan<sup>4</sup>;

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<sup>1</sup> Section 163.3164 (20), F.S.

<sup>2</sup> Section 421.001, F.S.

<sup>3</sup> Section 20.18, F.S.

<sup>4</sup> Until 2000, all state agencies annually developed an agency strategic plan and performance report to identify critical issues, broad goals and intermediate objectives, and identify how the agency mission would be fulfilled. The strategic plan had a 5-year planning horizon. In 2000, the Legislature implemented long-range program planning (s. 216.013, F.S.) to develop plans that achieve state goals by using an interagency planning process that includes development of integrated agency program service outcomes. The agency strategic plans were replaced with long-range program plans.

- Contracting with the Florida Housing Finance Corporation on a multi-year basis to stimulate, provide, and foster affordable housing;
- Administering the Low-Income Emergency Home Repair Program;
- Providing training and technical assistance to local governments, state agencies, and community-based organizations for the development of new housing and the rehabilitation of older housing for the purpose of providing affordable housing; and
- Collecting data on affordable housing in the state through the Shimberg Center for Affordable Housing at the University of Florida.

### **Florida Housing Finance Corporation – ss. 420.501-420.55, F.S.**

The Florida Housing Finance Corporation (successor to the Florida Housing Finance Agency) is the state entity primarily responsible for encouraging the construction of affordable housing in Florida. The corporation was created by the Legislature in 1997 to streamline implementation of affordable housing programs and is a public corporation housed with the DCA. The corporation is a separate budget entity not subject to control, supervision, or direction by the DCA and is governed by a board of directors comprised of the Secretary of Community Affairs (serving as an ex officio voting member) and eight members appointed by the Governor and subject to confirmation by the Senate. The corporation's executive director is appointed by the Secretary of Community Affairs with the advice and consent of the Board of Directors. The corporation functions under the terms of a multi-year contract with the Secretary of DCA to provide affordable housing in the state.

The corporation operates several housing programs financed with state and federal dollars, including:

- The State Apartment Incentive Loan Program (SAIL) which annually provides low interest loans on a competitive basis to affordable housing developers;
- The Florida Homeowner Assistance Program (HAP) which includes the First Time Homebuyer Program, the Down Payment Assistance Program, the Homeownership Pool Program, and the Mortgage Credit Certificate program;
- The Florida Affordable Housing Guarantee Program which encourages lenders to finance affordable housing by issuing guarantees on financing of affordable housing developments financed with mortgage revenue bonds;
- The State Housing Initiatives Partnership Program (SHIP) which provides funds to cities and counties as an incentive to create local housing partnerships and to preserve and expand production of affordable housing; and
- The Community Workforce Housing Innovation Pilot Program (CWHIP), which awards funds on a competitive basis to promote the creation of public-private partnerships to develop, finance and build workforce housing.

Affordable housing programs receive federal funds, and state documentary stamp tax revenues which are distributed to the State Housing Trust Fund and then used for the various corporation programs. The 2005 Legislature capped the rate of growth for distribution of documentary stamp tax revenues effective July 1, 2007, and the distribution to the State Housing Trust Fund is capped at a maximum of \$243 million annually. In FY 2007-2008, the Legislature appropriated \$390 million, and in FY 2008-2009, \$303 million to the Florida Housing Finance Corporation for affordable housing programs.

### **Affordable Housing Study Commission – s. 420.6075, F.S.**

The Affordable Housing Study Commission was created in 1986 by the enactment of chapter 86-192, Laws of Florida, and is responsible for recommending solutions and programs that address the statewide need for affordable housing for low and moderate income persons and households, and the elderly. The commission consists of 21 members appointed by the Governor for 4-year terms, and is representative of housing and local government interests in Florida, including housing for the elderly, home mortgage lenders, apartment and rental housing development, and the cities and counties.

The Legislature directed the commission to analyze solutions and programs that could address the need for affordable housing, including:

- Low-interest and zero-interest loans for developing or rehabilitating affordable housing;

- The use of public lands and buildings as affordable housing sites;
- Coordinating with federal initiatives;
- Streamlining various state, regional, and local regulations, and housing and building codes;
- Stimulating public and private cooperative housing efforts;
- Identifying and assessing funding strategies and sources for construction or rehabilitation of affordable housing; and
- Developing other solutions and programs.

Each year by July 15, the commission must prepare and submit a report to the Governor and the Legislature that details its findings on the above issues and includes recommendations on program, funding and legislative changes which may be necessary.

### **Public Housing Authorities – ss. 421.001-421.52, F.S.**

Section 421.04, F.S., creates in each municipality of the state a “housing authority” that is a public body corporate and politic<sup>5</sup> but which may not transact any business or exercise any powers until the municipal governing body adopts a resolution declaring a need for the housing authority to function. Once the resolution is adopted, the mayor can appoint no less than five and no more than seven persons to serve as commissioners of the housing authority. Appointments must be approved by the municipal governing body.

Section 421.27, F.S., creates housing authorities in each county of the state and provides that such housing authority may not transact any business or exercise any powers until the county governing body adopts a resolution declaring a need for the housing authority to function. Once the resolution is adopted, the Governor may appoint no less than five and no more than seven qualified electors who reside in the county to serve as housing authority commissioners. The area of operation for a county public housing authority includes only the unincorporated areas of such county.

The powers for all public housing authorities include, but are not limited to, the power to:

- Acquire, operate, and lease housing projects;
- Provide for the construction, reconstruction, improvement, alteration or repair of any housing project within its area of operation;
- To lease or rent dwellings, houses, accommodations, lands, buildings, structures, or facilities in any housing project within its area of operation; and
- Organize for the purpose of creating a for-profit or a not-for-profit corporation, limited liability company, or similar business entity in which the public housing authority may hold an ownership interest for the purpose of developing, acquiring, leasing, constructing, rehabilitating, managing, or operating a multi-family or single-family residential project.

Pursuant to s. 421.10, F.S., public housing authorities are restricted to leasing or renting dwellings to low-income persons and may only rent at a price that is within the financial reach of such persons. All housing authorities must accept any person as a tenant in any housing project according to the appropriate guidelines established by the U.S. Department of Housing & Urban Development or other federal agencies.<sup>6</sup>

According to the Special District Information Program at the Department of Community Affairs, there are 93 special districts in the state that function as housing authorities – 23 county housing authorities, 69 municipal housing authorities, and 1 regional housing authority in Northwest Florida that includes Bay, Calhoun, Dixie, Escambia, Franklin, Gadsden, Gulf, Hamilton, Holmes, Jackson, Jefferson, Lafayette, Leon, Liberty, Madison, Okaloosa, Santa Rosa, Taylor, Wakulla, Walton, and Washington counties.

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<sup>5</sup> Defined in Black’s Law Dictionary, 6<sup>th</sup> ed., (1995 reprint) as “a social compact by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good.”

<sup>6</sup> However, federal law requires that public housing authorities deny admission to individuals who are lifetime registrants of a sex offender list, to persons believed to be using drugs, and to persons convicted of manufacturing methamphetamine on public housing premises. (24 CFR ch. VIII – ss. 882.518)

## **Housing Cooperation Law – ch. 422, F.S.**

The Housing Cooperation Law was enacted in 1937 to provide for aid and cooperation among public housing authorities, local governments, and state agencies to plan, undertake, construct, or operate housing projects in areas where a housing authority is authorized to operate. “State public bodies”<sup>7</sup> were authorized to:

- Dedicate, sell, lease, or convey any property to a housing authority or the federal government;
- Provide parks, playgrounds, recreational, community, educational, water, sewer, or drainage facilities adjacent to or in connection with a housing project;
- Furnish, dedicate, close, pave, install, grade, regrade, plan, or re-plan streets, roads, roadways, alleys, and sidewalks;
- Enter into cooperative agreements with a public housing authority or the federal government;
- Contract with a public housing authority or the federal government for repayment of services and improvements furnished by the state public body; and
- Provide administrative funds for the first year of operation of a public housing authority which must be reimbursed by the public housing authority.

## **Tax Exemption of Housing Authorities – ch. 423, F.S.**

In 1937, the Legislature declared that projects created by housing authorities to provide safe and sanitary housing for low-income persons were exclusively for public use and municipal purposes, and not for profit. As such, the projects were declared governmental functions of the state and were declared to be exempt from taxation.

Section 423.02, F.S., provides that housing projects as well as all property of housing authorities used for the purposes of administering and operating housing projects, are exempt from all taxes and special assessments of the state, and any city, town, county, or political subdivision of the state. In lieu of such taxes or special assessments, the housing authority may agree to pay for services, improvements, or facilities furnished for the benefit of the housing project, but the reimbursement cannot exceed the estimated cost of the services, improvements or facilities to be furnished.

## **Findings**

### **Methodology**

#### *Excel Spreadsheet*

To prepare for meetings with the staff of the Florida Housing Finance Corporation, the professional staff of the Senate Community Affairs Committee reviewed the statutory provisions contained in ch. 420, F.S., and prepared an Excel spreadsheet listing each provision. The spreadsheet contained columns indicating the date the statutory provision was created, the last date a substantive change was made to the provision, a brief staff recommendation to discuss the repeal or revision of the statute, and a column for the corporation’s suggestions. The spreadsheet was forwarded to the corporation for review.

#### *Meetings*

The professional staff of the Senate Community Affairs Committee met with the staff of the Florida Housing Finance Corporation to review and discuss the spreadsheet. Provisions relating to the corporation’s responsibilities and suggestions for revision or repeal were discussed so that the spreadsheet could be updated with professional staff’s recommendations and forwarded to the corporation for further input.

The professional staff of the Senate Community Affairs Committee determined that while a meeting with the staff of the Department of Community Affairs would be useful in resolving some of the issues raised in the review of ch. 420, F.S., the department is subject to the provisions of the Florida Government Accountability Act contained in ss. 11.901-.902, F.S., and is in the first year of an agency sunset review. A meeting to discuss the statutory duties and

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<sup>7</sup> Defined in s. 422.03, F.S., as “any city, town, county, municipal corporation, commission, district, authority, or subdivision or public body of the state.”

responsibilities of the department relating to housing and urban development should be held after all information relating to the agency sunset review process has been submitted by the department.

## Findings

The professional staff of the Senate Community Affairs Committee found that various provisions of ch. 420, F.S., are outdated or duplicative and may need to be repealed. Certain provisions in Part II of ch. 420, F.S., relating to the Housing Development Corporation of Florida, have not been substantively changed since their creation in 1972. Some provisions, such as ss. 420.622-.626, F.S., creating the State Office of Homelessness in the Department of Children and Families, are located in the wrong statutory chapter and should be relocated. Inconsistencies in the responsibilities of the Department of Community Affairs and the Florida Housing Finance Corporation should be clarified, and statutory goals and policies of the Florida Housing Finance Corporation should be updated to reflect the challenges the corporation faces today in meeting the affordable housing needs of the state.

## Recommendations

Based upon the preliminary review of ch. 420, F.S., it is the recommendation of the professional staff of the Senate Community Affairs Committee that draft legislation be developed to:

- Repeal outdated provisions;
- Revise inconsistent or duplicative provisions;
- Update statutory goals and policies relating to the Florida Housing Finance Corporation and the Department of Community Affairs; and
- Transfer inappropriately placed provisions to a more appropriate chapter.

The professional staff further recommends that such draft legislation include any revisions which may be necessary after further review of chapters 421, 422, and 423, F.S., and be workshopped with staff of the Florida Housing Finance Corporation and the Department of Community Affairs as well as other interested parties to ensure the development of a consensus product