

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: March 11, 1998 Revised: 3/12/98 _____

Subject: Affordable Housing

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Schmith</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/ 3 amendments</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>WM</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Senate Bill 1156 revises and clarifies action by the 1997 Legislature which reconstituted the Florida Housing Finance Agency (FHFA) as the Florida Housing Finance Corporation (FHFC).

The bill makes the following technical and substantive changes to the statutes governing the FHFC:

- ▶ Provides that, in the event that the FHFC does not comply with performance measures outlined in its contract with the Department of Community Affairs, the Governor must direct the inspector general to investigate the non-performance. During such time, the Governor may request that the Office of the State Comptroller continue advances from the State Housing Fund sufficient to meet the debt service requirements of the FHFC.
- ▶ Exempts the corporation from providing notice through means of publication for internal review committee meetings for competitive proposals or procurement. Instead, it is permitted to send notice to applicants by mail or facsimile transmission.
- ▶ Provides that the FHFC is an instrumentality of the State of Florida.
- ▶ Authorizes the FHFC to mortgage any real or personal property owned by it.
- ▶ Includes disciplinary procedures for FHFC program applicants that have been involved in fraudulent actions.
- ▶ Clarifies that the corporation’s board of directors is covered by sovereign immunity.

- ▶ Clarifies whether the state fiscal year or the corporation's fiscal year is applicable for numerous requirements throughout the statutes.

This bill substantially amends the following sections of the Florida Statutes: 420.0005, 420.0006, 420.503, 420.504, 420.5061, 420.507, 420.5087, 420.5088, 420.5089, 420.509, 420.511, 420.512, 420.528, 420.9071, 420.9073, 420.9079 and repeals s. 420.504(8).

II. Present Situation:

The Florida Housing Finance Corporation (FHFC), formerly the Florida Housing Finance Agency (FHFA), is as an entrepreneurial public corporation organized to provide and promote the public welfare by administering the governmental functions of financing and refinancing affordable housing and related facilities in Florida. The Department of Community Affairs (DCA) contracts with the FHFC on a multi-year basis to administer state affordable housing programs.

Monetary Transfers to the State Housing Fund

Section 420.0005, F.S., established the State Housing Trust Fund. Money deposited to the fund and appropriated by the Legislature must be transferred quarterly in advance, or as soon as received, into the fund. Subject to the provisions of ss. 420.5092(6)(a) and (b), F.S., the Comptroller is to transfer such funds to the corporation upon certification by the Department Secretary that the corporation is in compliance with the requirements of s. 420.0006, F.S. The corporation is required to deposit moneys advanced by the Comptroller into a separate fund established with a qualified public depository meeting the requirements of chapter 280, F.S., which fund is to be named the "State Housing Fund" and used for the purposes of chapter 420, F.S.

Section 420.0006, F.S., requires the department to contract for procurement of personal property and services with the corporation on a multi-year basis to stimulate, provide, and foster affordable housing in the state. The contract must incorporate the performance measures required by s. 420.511, F.S.

The contract between the department and the corporation must provide that in the event the corporation fails to comply with any of the performance measures, the Department Secretary will notify the Governor and refer the nonperformance to the department's inspector general for review and determination as to whether the failure is due to forces beyond the corporation's control or whether it is due to inadequate management of the corporation's resources. Failures determined to be due to outside forces are not to be considered violations of the contract.

If a failure is determined to be due to inadequate management, the department's inspector general must make recommendations for solutions. Advances of moneys are to continue to be made pursuant to s. 420.0005, F.S., during the pendency of the review by the department's inspector general. The Governor is authorized to resolve differences of opinion with respect to contract

performance and to direct that advances continue when a failure results from inadequate management.

Status as a State Agency v. Corporation

Section 420.504, F.S., declares that the corporation constitutes an entrepreneurial public corporation organized to provide and promote the public welfare by administering the governmental function of financing and refinancing housing and related facilities in Florida. It is further declared to be the intent of and constitutional construction by the Legislature that the corporation is not a department of the executive branch of state government within the scope and meaning of section 6, Article IV of the State Constitution, but is functionally related to the department.

Subsection (1) requires that the executive function of state government to be performed by the department Secretary in the conduct of the business of the corporation be performed pursuant to an annual contract to monitor and set performance standards for implementation of the business plan for the provision of housing approved for the corporation in s. 402.0006, F.S. The contract must include performance standards established in the business plan described in s. 420.511, F.S.

Subsection (2) declares the corporation is constituted as a public instrumentality, and the exercise by the corporation of powers conferred by this act is considered to be the performance of an essential public function. The corporation is subject to chapter 119, F.S., relating to public records, subject to exceptions applicable to the corporation, and subject to chapter 286, F.S., relating to public business. The corporation is not governed by chapter 607, F.S., relating to corporations. The subsection also provides that if the establishment of the corporation is deemed in violation of law, those provisions are severable from the rest of the act.

Section 420.5061, F.S., transferred all Agency assets and liabilities to the corporation on January 1, 1998. In assuming all previous Agency obligations, the corporation retains any rights and remedies previously afforded by law or contract, including the rights of the Agency under chapter 201, F.S., relating to excise tax on documents, and part VI of chapter 159, F.S., relating to bond financing. However, some parties have questioned the corporation's status as a state agency for purposes of participation in the state pool allocation for private activity bonds, pursuant to s. 159.807(4)(a), F.S.

Subsection 420.507(29), F.S., authorizes the corporation to own real and personal property for the purposes of part V of chapter 420, F.S., and to sell the property without regard to the provisions of chapter 253, F.S., relating to state lands, and chapter 270, F.S., relating to public lands.

Prior to becoming an independent corporation, the FHFC enjoyed the benefits of sovereign immunity as a division of the Department of Community Affairs. Currently, it is unclear whether the FHFC is privileged to the protections of sovereign immunity.

III. Effect of Proposed Changes:

Section 1 amends section 420.0005, Florida Statutes, by adding a cross-reference to section 420.504(3), Florida Statutes. At the request of the Comptroller's office, inserting this cross-reference to the corporation as a budget entity separate from the Department of Community Affairs clarifies that making monetary transfers to that budget entity does not trigger budget oversight responsibilities for the Office of the Comptroller. In addition, appropriate modifiers are added to distinguish the "State Housing Fund" from the "State Housing Trust Fund" to clarify that all loan repayments, penalties, fees, charges and interest earned on investments of the State Housing Fund are to be credited thereto, and that the cap on administrative and personnel costs to be paid from that fund also apply thereto.

Section 2 amends section 420.0006, Florida Statutes, to add a requirement that the contract between DCA and the FHFC track compliance with s. 420.511, Florida Statutes, which requires the corporation to prepare a business plan containing performance measures and targets, a strategic plan, and a report to the Legislature on enumerated issues relating to the provision of affordable housing.

This section is further amended to clarify when the Comptroller's office is required to make monetary transfers to the corporation during an investigation for non-performance of the contract with DCA. The new language clarifies that the Comptroller may approve the Governor's request to make such transfers absent a finding by the Comptroller that providing such advances would adversely impact the state. However, *in any event* the Comptroller shall make advances to meet the debt service requirements of the corporation and fund contracts, as long as those contracts are in accordance with state law.

Section 3 amends subsection (35) of section 420.503, Florida Statutes, to clarify that the term "fiscal year" refers to the "fiscal year of the corporation" in defining a service provider to the corporation.

Section 4 amends section 420.504, Florida Statutes, as follows: Subsection (1) is amended to delete a reference to an annual contract between the FHFC and the DCA in recognition that it may be a multi-year contract; subsection (2) is amended to exempt notices of internal review committee meetings relating to competitive proposals or procurement to applicants from the requirement for publication of notice; and subsection (9) is amended to clarify that the corporation is an instrumentality of the state for purposes of sovereign immunity and to delete language which would have defined the term "recklessness" for determining when a board member of the corporation would be held personally liable for his or her actions.

Section 5 amends section 420.5061, Florida Statutes, to specify that the corporation is considered a state agency for the purpose of qualification to participate in the state allocation pool for private activity bonds, pursuant to s. 159.807(4)(a), F.S.

Section 6 amends subsections (27), (29) and (30) of section 420.507, Florida Statutes, and creates new subsections (34) and (35). Subsection (27) is amended to clarify that the corporation may develop its own guidelines for acquiring services as well as materials. Subsection (29) is amended to authorize the corporation to mortgage its own property. Subsection (30) is amended to delete a requirement that the corporations' budget requests for each of its programs be classified as a special category appropriation. Subsections (34) and (35) are created to authorize the corporation to establish its fiscal year and to preclude from participation in the corporation's programs any applicant, or affiliate thereof, which has made a material misrepresentation or engaged in fraudulent actions in connection with an application for a corporate program.

Section 7 amends subsection (7) of section 420.5087, Florida Statutes, to clarify that "fiscal year" refers to the state fiscal year for purposes of allowing an expenditure for a construction period that extends beyond the fiscal year in which the funds were committed.

Section 8 amends subsection (4) of section 420.5088, Florida Statutes, to insert the words "fund availability" in lieu of the words "each fiscal year" in recognition that fund availability does not always coincide with the beginning of a fiscal year. This change conforms the Florida Homeownership Assistance Program with other of the corporation's programs.

Section 9 amends subsection (1) of section 420.5089, Florida Statutes, by deleting obsolete language. HOME funds are derived directly from the federal government and are not subject to the state budgeting process; therefore, this language relating to limitations on expenditures beyond the fiscal year is obsolete.

Section 10 amends paragraph (a) of subsection (12) of section 420.509, Florida Statutes, to conform this section with changes authorizing the corporation to issue its own bonds.

Section 11 amends section 420.511, Florida Statutes, by deleting a requirement that the corporation's business plan include performance measures and targets related to the stimulus of economic activity created by the affordable housing finance programs it administers. Advocates for the corporation requested that this provision be removed inasmuch as the corporation has no control over this outcome. However, the corporation is still required to compile data on said economic activity stimulus.

This section is also amended to shorten the time period in which the corporation must submit its annual report to the Legislature from six months to two months after the end of the corporation's fiscal year.

Section 12 amends subsection (5) of section 420.512, Florida Statutes, to limit those "service providers" who are subject to the gubernatorial and state board of administration candidate contribution and fundraising limits.

Section 13 amends subsection (2) of section 420.528, Florida Statutes, to clarify that “fiscal year” refers to the corporation’s fiscal year for reporting on the status of programs in the corporation’s annual report.

Section 14 amends subsection (4) of section 420.9071, Florida Statutes, to correct a citation to the Code of Federal Regulations. Subsection (23) is also amended to clarify that “fiscal year” refers to the state fiscal year for determining which estimate of population is to be used.

Section 15 amends subsection (3) of section 420.9073, Florida Statutes, to clarify that “fiscal year” refers to the state fiscal year for the period in which guaranteed amounts are to be calculated.

Section 16 amends subsection (2) of s. 420.9079, Florida Statutes, to clarify that “fiscal year” refers to the state fiscal year for determining the period in which the corporation may request a maximum amount of funds for compliance monitoring.

Section 17 repeals subsection (8) of section 420.504, Florida Statutes. This section, relating to limiting the liability of board members, is repealed in light of the application of sovereign immunity.

Section 18 provides an effective date upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Several parties have indicated that the intent of the cross-reference to s. 420.511, F.S., in Section 2 of the bill, is to require compliance with the corporation's strategic plan. If so, subsection (2) should be referenced or the term "strategic plan" should be referenced therein. It appears that the appropriate reference is to the corporation's business plan, which must contain the performance measures and targets. This interpretation is consistent with cross-references in s. 420.504, F.S., as well.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Community Affairs:

Clarifies that the contract between the Department and the corporation must be consistent with corporation's strategic plan.

#2 by Community Affairs:

Corrects a cross-reference.

#3 by Community Affairs:

Expands the powers of the corporation to include the provision of infrastructure improvements and rehabilitation "primarily in connection with residential housing."