

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Community Affairs Committee

BILL: PCS/SB 780

INTRODUCER: Community Affairs Committee

SUBJECT: Affordable Housing

DATE: April 11, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Molloy	Yeatman	CA	Pre-meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The proposed committee substitute requires certain counties to adopt a financially feasible plan for ensuring adequate workforce housing by a certain date, creates an expedited amendment process for certain comprehensive plan amendments, and creates an exception to restrictions on the number of plan amendments which can be adopted annually. The proposed committee substitute deletes outdated language relating to the transfer of duties and responsibilities from the Florida Housing Finance Agency to the Florida Housing Finance Corporation (corporation). The proposed committee substitute provides that certain agreements, which must be recorded in the official public records, are state land use regulations that limit the highest and best use of property when property appraisers determine just value of real property for ad valorem tax purposes. Revisions are made regarding the selection of projects funded under the Community Workforce Housing Innovation Pilot Program (CWHIP), and the expedited processing of development orders and development permits for affordable housing is required. The cap on predevelopment loans for affordable housing projects is adjusted and the membership of local affordable housing advisory committees is revised.

The proposed committee substitute substantially amends ss. 163.3177, 163.3184, 163.3187, 420.504, 420.506, 420.5061, 420.507, 420.5095, 420.511, 420.513, 420.526, 420.9076, Florida Statutes.

II. Present Situation:

Local Government Comprehensive Plans

Section 163.3177, F.S., requires that each comprehensive plan contain a capital improvements element designed to consider the need for and the location of public facilities in order to encourage the efficient utilization of such facilities. All public facilities must be consistent with the capital improvements element.

The comprehensive plan must also include the following elements:

- (1) a traffic circulation element consisting of the types, locations, and extent of existing and proposed major thoroughfares and transportation routes, including bicycle and pedestrian ways;
- (2) a general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge element correlated to principles and guidelines for future land use, indicating ways to provide for future potable water, drainage, sanitary sewer, solid waste, and aquifer recharge protection requirements for the area;
- (3) a conservation element for the conservation, use, and protection of natural resources in the area;
- (4) a recreation and open space element indicating a comprehensive system of public and private sites for recreation;
- (5) a housing element;
- (6) for those units of local government identified by statute, a coastal management element, appropriately related to the particular requirements of the conservation element and the recreation and open space element and meeting certain statutory requirements; and
- (7) for each unit of local government within an urbanized area designated for certain statutory purposes, a transportation element, which must be prepared and adopted in lieu of certain statutory requirements.

Adoption of Comprehensive Plans or Plan Amendments

Section 163.3184, F.S., establishes requirements for the transmittal and review of proposed comprehensive plans and plan amendments. Local governing bodies are required to submit a proposed plan or a plan amendment to the Department of Community Affairs, the appropriate regional planning council and water management district, the Department of Environmental Protection, the Department of State, and the Department of Transportation. Municipalities must submit plans and amendments to the appropriate county, and county plans and amendments are also submitted to the Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services. Review and notice requirements, the plan and amendment adoption process, and requirements for plans and amendments found to be in or out of compliance are established.

Section 163.3187, F.S., provides that amendments to comprehensive plans adopted under part II of chapter 163 may be made not more than two times during any calendar year, and provides exceptions to that restriction.

Florida Housing Finance Corporation

The corporation, formerly the Florida Housing Finance Agency (agency), is the primary state entity responsible for encouraging the construction of affordable housing in Florida. The corporation was created in 1997 when the Legislature implemented chapter 97-167, Laws of Florida, to streamline implementation of affordable housing programs in Florida by reconstituting the agency as the corporation. The corporation is a public corporation housed within the DCA, and is a separate budget entity not subject to control, supervision, or direction by the DCA. The corporation is governed by a board of directors comprised of the Secretary of DCA serving as an ex officio voting member, and eight members appointed by the Governor subject to confirmation by the Senate.

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 are funded from 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 in the 2007-2008 fiscal year, the State Housing Trust Fund is eligible to receive a maximum of \$243 million.

Corporation assets and liabilities

In 1997, when the Legislature reconstituted the agency as the corporation, the Florida Housing Finance Agency Trust Fund, the State Apartment Incentive Loan Trust Fund, the Florida Homeownerships Assistance Trust Fund, and HOME Partnership Trust Fund, and the Housing Redevelopment Trust Fund were reconstituted as separate funds within the corporation. Section 10 of chapter 97-167, Laws of Florida, directed the corporation to transfer to the General

Revenue Fund an amount equal to the amount that would have been deducted from the seven percent surcharge on trust funds, and s. 420.5061, F.S., still requires the same transfer. As required in s. 215.20(1), F.S., the seven percent service charge is appropriated from all income of a revenue nature deposited in all trust funds, except those specified in s. 215.22, F.S. The corporation's funds are not listed in the exemption.

SAIL Program

The SAIL program, created in s. 420.5087, F.S., authorizes the corporation to underwrite or make loans or loan guarantees if:

- The project sponsor uses tax-exempt financing for the first mortgage and at least 20 percent of the units are set aside for persons or families who meet the income eligibility requirements of s. 8 of the United States Housing Act of 1937, as amended;
- The project sponsor uses taxable financing for the first mortgage and at least 20 percent of the units are set aside for persons or families who have incomes below 50 percent of the state or local median income, whichever is higher, adjust to family size;
- The project sponsor uses federal low-income housing tax credits and the projects meets the tenant eligibility requirements of s. 42 of the Internal Revenue Service code, or
- The project is located within a county that has an area that is, or within the previous 5 years was designated as an area of critical state concern for which the Legislature has declared its intent to provide affordable housing, and 100 percent of the units in the project are set side for persons or families with incomes below 120 percent of the state or local median income, whichever is higher.

Funds must be reserved for commercial fishing workers and farm workers, families, the elderly, and the homeless. Projects that maintain 80 percent of their units for commercial fishing workers and farm workers, and the homeless, are eligible to receive loans at a 1 percent interest rate. All other projects are eligible for loans at a 3 percent rate. Ten percent of funds set aside to house the elderly must be reserved to provide loans to sponsors of housing for the elderly for the purpose of making building health and preservation improvements, or sanitation repairs or improvements required by federal, state, or local law or regulation, or life safety or security-related repairs or improvements. Loans from the reserved funds may not exceed \$750,000 per housing community, and the sponsor of the housing community must commit to matching at least 5 percent of the loan amount needed to pay for the necessary repairs or improvements.

For fiscal year 2007-2008, funding for the SAIL program is estimated to be \$155 million.

Community Workforce Housing Innovative Pilot Program (CWHIP)

The Community Workforce Housing Innovative Pilot Program was created in 2006 for the purpose of providing affordable rental and home ownership community workforce housing for essential services personnel with medium incomes in high-cost and high-growth counties. The pilot program is designed to use regulatory incentives and state and local funds to promote local public-private partnerships and to leverage government and private sources. For fiscal year 2006-2007, CWHIP received \$50 million in state funds. In the coming fiscal year, funding for CWHIP is estimated to be \$70 million.

Affordable Housing Income Requirements

Under chapter 420, F.S., a very-low-income person is one or more natural persons or a family, not including students, having a total annual adjusted gross household income that is not more than 50 percent of the median annual adjusted gross income for households within the state, or 50 percent of the median annual adjusted gross income for households within a metropolitan statistical area or, if not within a metropolitan statistical area, within the county in which the person or family resides, whichever is greater. A low-income person is one or more natural persons or a family, the total annual adjusted gross household income of which does not exceed 80 percent of the median annual adjusted gross income for households within the state, or 80 percent of the median annual adjusted gross income for households within a metropolitan statistical area, or if not within a metropolitan statistical area, within the county in which the person or family resides, whichever is greater.

Section 4, Article VII, State Constitution

Section 4, Article VII, of the State Constitution, requires that all property be assessed at just value for ad valorem taxing purposes. The Florida Supreme Court has construed “just value” to be “fair market value” and “fair market value” to be the amount a purchaser willing but not obliged to buy, would pay to one willing but not obliged to sell. Certain exceptions to just value assessment, such as the homestead exemptions, the “Save Our Homes” limitation, and the exception for agricultural land, are constitutionally authorized.

Section 193.011, F.S.

Section 193.011, F.S., requires that property appraisers consider the following factors in arriving at just valuation:

- Present cash value of the property, which is the amount a willing purchaser would pay a willing seller, excluding reasonable fees and purchase costs, in an arm’s length transaction,
- The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration certain factors such as judicial limitations, or local or state land use regulations,
- The location of the property,
- The quantity or size of the property,
- The cost of the property and the present replacement value for improvements on the property,
- The condition of the property,
- The income from the property, and
- The net proceeds from the sale of the property after deducting the usual and reasonable fees and costs of sale.

Low-Income Housing Tax Credits

Sections 193.017 and 420.5099, F.S., provide that for purposes of implementing the Low-Income Housing Tax Credit Program and in assessing for ad valorem taxation under just valuation requirements, neither the tax credits or the financing generated by the tax credits, shall be considered income to the property, and the actual rental income from rent-restricted units shall

be recognized by the property appraiser. In addition, any extended low income housing agreement and all amendments to the agreements that are recorded and filed in the official public records of the county where the property is located are deemed a land use regulation during the term of the agreements and any amendments thereto.

Holly Ridge Limited Partnership, Appellant v Pritchard, et al, Appellees (936 So.2d 694)

The Holly Ridge Limited Partnership owns 120 senior rental apartments in Putnam County which were built with tax credit financing under the Low Income Housing Tax Credit program administered by the corporation. This federal program was created in 1986 to encourage the private sector to develop affordable housing projects. Under the federal program, each state receives an annual allocation of low income housing tax credits which equate to a dollar-for-dollar federal tax liability reduction taken over a 10-year period.

The tax credits are awarded on a competitive basis and are used as a financing mechanism for the developer to pay most of the project construction costs. The credits are sold by the developer to a banking institution for around 80 cents per dollar, and the banker becomes a limited partner in the development. Once the project is constructed, the bank is eligible to use the tax credits one year at a time, and after ten years, the credits are exhausted.

In the Holly Ridge development, the developer received \$8 million in tax credits and sold them to the bank for \$6.4 million. As a condition of receiving the tax credits, the developer placed the property under a Land Use Restriction Agreement which restricted the use of the property for 50 years. Part of the agreement requires set-asides in the development based on income restrictions under which the tenants may not be charged more than 30 percent of their maximum monthly income as rent. The property can only be used for rental apartments.

Holly Ridge sued the Putnam County property appraiser over unfavorable ad valorem tax assessments for the years 2002 and 2003. The trial court found in favor of the property appraiser, and Holly Ridge appealed. In August of 2006, the Fifth District Court of Appeals determined that the property appraiser failed to comply with state law (s. 420.5099, F.S.) in determining just valuation when he factored in the impact of tax credits to derive a capitalization rate, instead of using a market capitalization rate, and he derived an unreasonably low capitalization rate. The District Court reversed the trial court's judgment and remanded the case for a new trial. The Florida Supreme Court denied review.

III. Effect of Proposed Changes:

Section 1 amends s. 163.3177, F.S., to require certain counties to adopt a financially feasible plan for ensuring adequate workforce housing. Failure to comply with this requirement will result in a local government being unable to receive state housing assistance grants.

Section 2 amends s. 163.3184, F.S., to create subsection (19), providing for an expedited amendment adoption process for comprehensive plan amendments that are consistent with local housing incentive strategies identified in s. 420.9076, F.S., and authorized by local governments.

Section 3 amends s. 163.3187, F.S., to provide that comprehensive plans may be amended more than twice in any calendar year to include amendments that are consistent with local housing incentive strategies identified in s. 420.9076, F.S., and authorized by the local government.

Section 4 amends s. 420.504, F.S., to provide that the Florida Housing Finance Corporation is a state agency for purposes of the state allocation pool under s. 159.807, F.S., (transferred from s. 420.5061, F.S.) , that the corporation may provide notice of internal review committee meetings by publication on an Internet website, and that the corporation is not governed by requirements of chapter 617, relating to corporations not for profit, but is governed by the requirements of part V of chapter 420.

Section 5 amends s. 420.506, F.S., to delete outdated language relating to the authority of the corporation to enter into lease agreements with the Department of Management Services, or the DCA, for the lease of state employees to conduct corporation business.

Section 6 amends s. 420.5061, F.S., to delete outdated language relating to the transfer of assets from the Florida Housing Finance Agency to the corporation in 1998. Deletes language providing that the corporation is a state agency for purposes of the state allocation pool. Deletes the requirement that the corporation transfer funds to the General Revenue Fund in an amount which would otherwise have been deducted as a service charge under s. 215.20(1), F.S., if certain corporate funds were trust funds.

Section 7 amends s. 420.507, F.S., to provide that as a condition of financing a multifamily rental project, the corporation may require that an agreement be recorded in the official public records of the county in which the real property for the project is located, which requires that the project be used for affordable housing for persons that meet specific income criteria. Provides that such agreement is a state land use regulation that limits the highest and best use of the property for purposes of determining just value under s. 193.011(2), F.S.

Section 8 amends s. 420.5095, F.S., relating to the Community Workforce Innovation Housing Pilot Program, to:

- Authorize the corporation to establish by rule a loan application process that includes selection criteria, an application review process, a funding process, and an application review committee.
- Provide for membership of the application review committee.
- Require that the application review process and the selection criteria include a procedure for curing errors in an application or in a response so long as no substantial changes are made to the project.
- Authorize the application review committee to approve or reject loan applications or responses for sufficiency of information.
- Require that the application review committee make program participation and funding recommendations to the corporation's board of directors.
- Require that the board of directors approve or reject loan applications, determine the tentative loan amount available to each applicant, and rank all approved applications.
- Require that the board of directors decide which approved applicants will be program participants and determine the maximum loan amount for each participant.

- Authorize local governments to use SHIP funds for projects in areas where a person or family's total annual household income does not exceed 140 percent of the area median income, adjusted for household size.
- Authorize local governments in areas of critical state concern, or areas which were designated as areas of critical state concern for at least 20 years, to use SHIP funds for projects in areas where a person or family's total annual household income does not exceed 150 percent of the area median income, adjusted for household size.
- Require that CWHIP funding be targeted to innovative projects where the area median income and the median sales price for a single-family home, and the rate of population growth are the greatest.
- Require that CWHIP projects be funded in as many counties and regions of the state as is practicable.
- Provide priority funding consideration for:
 - Projects in areas where a local government has adopted, or is committed to adopting, appropriate regulatory incentives, local contributions or financial strategies, or other funding sources to promote the financial viability of CWHIP projects, and
 - Projects that include innovative design, green building principles, or storm resistant construction.
- Provide that expedited comprehensive plan amendments for CWHIP projects are governed by the requirements of ss. 163.3184 (9)-(16), F.S., relating to compliance and non-compliance of plan amendments, Administrative Commission hearing requirements, good faith filing, exclusive proceedings, areas of critical state concern, public hearings, and compliance agreements.
- Provide that the processing of approvals of development orders and development permit approvals for CWHIP projects shall be expedited.
- Clarify that all eligible CWHIP project applications demonstrate that the applicant is a public-private partnership in an agreement, contract, partnership agreement, memorandum of understanding, or other written instrument signed by all of the project partners.
- Revise annual reporting requirements relating the success of the CWHIP.

Section 9 amends s. 420.511, F.S., to provide that annual reports submitted by the corporation include the CWHIP report, and address the success of CWHIP in meeting the housing needs of the eligible areas.

Section 10 amends s. 420.513, F.S., to clarify that notes, mortgages, security agreements, letters of credit, or other instruments that arise out of, or are given to secure, the repayment of loans issued in connection with the financing of the corporation's housing projects, are exempt from taxation by the state and its political subdivisions.

Section 11 amends s. 420.526, F.S., to raise the cap on predevelopment loans made by the corporation to the lesser of the development and acquisition costs for the project, or \$750,000.

Section 12 amends s. 420.9076, F.S., to:

- Increase the membership of the local affordable housing advisory committees from nine members to eleven members by adding a citizen who represents employers within the

jurisdiction, and a citizen who represents essential service personnel as defined in the local housing assistance plan.

- Provide that local governments who receive a minimum allocation under the SHIP may have an advisory committee with fewer members.
- Require that the advisory committee review the established policies and procedures, ordinances, land development regulations, and adopted local comprehensive plans every three years.
- Require that the advisory committee submit a report to the local governing body that includes recommendations on affordable housing incentives, and review the implementation of affordable housing incentives every three years in specified areas.
- Authorize the advisory committee to perform additional responsibilities at the request of the local governing body, including providing mentoring services to affordable housing partners and creating best management practices for the development of affordable housing.

Section 13 provides that the act shall take effect July 1, 2007.

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:

State Agency Impact

The Florida Housing Finance Corporation expects a minimal fiscal impact from the provisions of the bill.

Transfers from the corporation's funds to the General Revenue Fund, as specified by s. 420.5061, F.S., have not occurred since the initial 1997 transfer. If the transfer had occurred on an annual basis, the General Revenue Fund would have received \$6.126 million over the 9-year period.

Local Government Impact

The proposed committee substitute authorizes the corporation to require that as a condition of financing multi-family projects, certain agreements be recorded in the official public records requiring that the project be used for affordable housing where monthly rents and mortgage payments are limited to not more than 30 percent of the amount representing the percentage of median annual income for qualifying extremely-low-income, low-income, moderate-income, and very-low income persons or families. The proposed committee substitute further provides that such agreements are state land use regulations that limit the highest and best use of the property for purposes of determining just value which will result in an indeterminate fiscal impact on local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In 1991, the Department of Revenue issued Technical Assistance Advisement No. 91(B)4-011, relating to documentary stamp tax under the Florida Housing Finance Agency's Single Home Family Mortgage Loan Program. The Department's Position was that s. 420.513(1), F.S., (1991) provided that a tax exemption for transactions and operations of the agency included notes and mortgages executed by a borrower in favor of contracting participating lenders for the purpose of financing a single-family residence under ch. 420, F.S.

Also in 1991, the Department of Revenue issued Technical Assistance Advisement No. 91(m)-005, relating to documentary stamp tax and intangible tax under the Florida Housing Finance Agency's Single Family Mortgage Loan Program. The Department's position was that all bonds, notes and mortgages, even though the mortgage may be executed by a nonexempt party, which were issued pursuant to the Mortgage Origination Agreement fell squarely within the "transaction and operations" of the agency, and as such, were exempt from taxes imposed by chs 199 and 201, F.S. The Department noted that a narrower interpretation "would defeat the legislative intent and the purpose for which the 'Florida Housing Finance Agency' was created."

Advisory Legal Opinion 94-82, Florida Attorney General – In 1994, the Department of Community Affairs requested that the Office of the Attorney General issue an advisory opinion on the applicability of documentary stamp tax to mortgages of the Florida Housing Finance Agency. Attorney General Butterworth's Opinion stated:

"The Florida Housing Finance Agency is exempt from the payment of the excise tax on mortgages in favor of the Florida Housing Finance Agency. However, in those cases

where the agency is recording such a mortgage, the nonexempt party is liable for payment of those taxes.”

In his Opinion, the Attorney General referred to the fiscal note on the CS/HB 830, enacted as chapter 80-161, Laws of Florida, which noted “that housing financing and construction activity in Florida will increase if the housing finance authority is successful and that this will result in revenue growth, *primarily in the documentary stamp, intangibles, and sales taxes.*” The Attorney General further noted that “clearly, the committee did not intend that all parties involved in housing finance authority mortgage business would be exempt from taxation.”

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

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