

**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 Budget Subcommittee on Finance and Tax

**BILL:** CS/CS/SB 1182

**INTRODUCER:** Budget Subcommittee on Finance and Tax; Community Affairs Committee; and Senator Norman

**SUBJECT:** Public Housing

**DATE:** February 23, 2012      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	Fav/CS
2.	Babin	Diez-Arguelles	BFT	Fav/CS
3.			BC	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

CS/CS/SB 1182 (“the bill”) allows the Florida Housing Finance Corporation to use 10 percent of its annual allocation of: 1) low-income housing tax credits, 2) nontaxable revenue bonds, and 3) State Apartment Incentive Loan (SAIL) funds for proposals related to high priority affordable housing projects, such as housing to support economic development and job creation, housing for veterans and their families and housing for other special needs populations.

This bill also provides a finding that essential commercial goods and services required for daily living are necessary to residents of housing authorities but are difficult to access. The bill grants a housing authority the ability to develop and construct commercial projects, which would provide these types of goods and services. Revenue received by a housing authority from a commercial project must be used to upgrade and improve the housing project or to preserve and rehabilitate other housing authority properties. A commercial project so established would be exempt from property taxation and all taxes and special assessments of the state or any city, town, county, or political subdivision of the state. A housing authority’s power of eminent domain would not apply to real property used to provide access to essential commercial goods and services.

The bill also revises provisions for terminating a rental agreement that involves rent subsidies received from a local, state or national government.

This bill substantially amends sections 83.56, 421.02, 421.03, 421.08, 421.09, 421.32, 422.02, 422.04, 423.01, 423.02, and 420.507, Florida Statutes.

This bill substantially amends and reenacts section 421.21, Florida Statutes.

## II. Present Situation:

### Public Housing Authorities

The state role in housing and urban development is outlined in part I of ch. 421, F.S., (Housing Authorities Law), ch. 422, F.S., (Housing Cooperation Law), and ch. 423, F.S., (Tax Exemption of Housing Authorities).<sup>1</sup> Section 421.02, F. S., finds that there is a shortage of safe or sanitary dwelling accommodations available at rents which persons of low income can afford. Providing such accommodations, including the acquisition by a housing authority of property to be used for or in connection with housing projects, are deemed exclusively public uses and purposes for which public money may be spent and private property may be acquired. These purposes are determined to be governmental functions of public concern.

### City, County, and Regional Housing Authorities

Florida statutes provide for the creation of special district, city, county and regional housing authorities. Of the 110 Public Housing Authorities in Florida,<sup>2</sup> 93 are special districts.<sup>3</sup>

The determination of the need for a city housing authority may be made by the governing body of a city or upon the filing of a petition signed by 25 city residents. The mayor, with the approval of the governing body, appoints no fewer than five and no more than seven persons as commissioners of the authority.<sup>4</sup> The powers of each authority are vested in the commissioners and action may be taken upon a majority vote of the commissioners. No commissioner or employee of an authority may acquire any interest in any housing project or in any property included or planned to be included in any project, nor in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project.<sup>5</sup>

Section 421.08, F.S., establishes the powers of a housing authority, including:

- the power to acquire, lease, and operate housing projects,

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<sup>1</sup> The Department of Economic Opportunity (DEO) is the state agency charged with the responsibility of this state role.

<sup>2</sup> Florida Housing Data Clearing House, *Public Housing Agency Results*, available at [http://flhousingdata.shimberg.ufl.edu/a/public\\_housing\\_agency?next=results&submit\\_submit.x=15&submit\\_submit.y=13&nid=1](http://flhousingdata.shimberg.ufl.edu/a/public_housing_agency?next=results&submit_submit.x=15&submit_submit.y=13&nid=1) (last visited Feb 19, 2012).

<sup>3</sup> Florida Department of Economic Opportunity, *Official List of Special Districts Online*, (available online at <http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/index.cfm>) (last visited Feb. 19, 2012).

<sup>4</sup> At least one commissioner must be a resident of a housing project or a person of low income who resides within the housing authority's jurisdiction and is receiving a rent subsidy. See s. 4231.05(1), F.S.

<sup>5</sup> See s 421.06, F.S.

- the power to provide for the construction, reconstruction, improvement, alteration, or repair of any housing project,
- the power to lease or rent any dwellings, houses, accommodations, lands, buildings, structures, or facilities embraced in any housing project, and
- the power to invest any funds held in reserves or sinking funds.

Section 421.08(8)(a), F.S., grants the power to:

organize for the purpose of creating a for-profit or not-for-profit corporation, limited liability company, or other similar business entity . . . to develop, acquire, lease, construct, rehabilitate, manage, or operate multifamily or single-family residential projects. These projects may include nonresidential uses and may use public and private funds to serve individuals or families who meet the applicable income requirements of the state or federal program involved; . . .

Section 421.27, F.S., governs the creation and powers of county housing authorities which is similar to the creation of city housing authorities.<sup>6</sup> A county housing authority's area of operation includes all of the county except that portion which lies within the territorial boundaries of any city as defined in the Housing Authorities Law. A regional housing authority may be created by two or more contiguous counties if a regional entity would be a more economically or administratively efficient unit.<sup>7</sup> The powers of a regional housing authority are analogous to those of a city or county housing authority.

### **Housing Authorities and Eminent Domain**

An authority has the right to acquire by the exercise of the power of eminent domain any real property which it may deem necessary for its purposes.<sup>8</sup> Property already devoted to a public use may be acquired in like manner, provided that no real property belonging to the city, the county, the state or any political subdivision may be acquired without its consent.

### **Federal Aid for Housing Authorities**

Section 421.21, F.S., empowers a housing authority to borrow money or accept grants or other financial assistance from the Federal Government for housing projects. This section also allows a housing authority to take over or lease or manage any housing project or undertaking constructed or owned by the Federal Government. In addition, an authority is authorized "to do any and all things necessary or desirable to secure the financial aid or cooperation of the Federal Government in the undertaking, construction, maintenance or operation of any housing project by such authority."<sup>9</sup>

<sup>6</sup> In counties, petitions must be signed by 25 county residents and the Governor appoints the commissioners.

<sup>7</sup> See s. 421.28, F.S. The Governor appoints commissioners pursuant to s. 421.30, F.S.

<sup>8</sup> Section 421.12, F.S. An authority may exercise the power of eminent domain pursuant to ch. 73 and ch. 74, F.S.

<sup>9</sup> Section 421.21, F.S.

### **Housing Cooperation Law (Chapter 422, Florida Statutes)**

Chapter 422, Florida Statutes, provides that any state public body, for the purpose of aiding and cooperating in the construction or operation of housing projects may:

- sell or lease any of its property to a housing authority or the Federal Government;
- cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities or any other works, which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with housing projects;
- furnish, close, pave, install, grade, or plan streets, roads, alleys, or sidewalks;
- do any and all things, necessary or convenient to aid and cooperate in the planning, undertaking, construction or operation of housing projects;
- purchase or legally invest in any of the debentures of a housing authority.<sup>10</sup>

### **Tax Exemption of Housing Authorities**

Chapter 423, Florida Statutes, provides property tax exemptions as well as state and local government tax and assessment exemptions for housing authorities. Specifically, s. 423.01(4), F.S., states:

Such housing projects, including all property of a housing authority used for or in connection therewith or appurtenant thereto, are exclusively for public uses and municipal purposes and not for profit, and are governmental functions of state concern. As a matter of legislative determination, it is found and declared that the property and debentures of a housing authority are of such character as may be exempt from taxation.

Section 423.02, F.S., states that

. . . housing projects, including all property of housing authorities used for or in connection therewith or appurtenant thereto, of housing authorities shall be exempt from all taxes and special assessments of the state or any city, town, county, or political subdivision of the state . . .<sup>11</sup>

### **Age of Public Housing Units in Florida**

The first public housing units were built in Florida in the 1940s. According to the Shimberg Center for Housing Studies at the University of Florida, as of 2009, public housing authorities provided 35,840 housing units in the state. Of these, 77% were built before 1980 and 15% are now over 50 years old.<sup>12</sup> The table below provides data on numbers and ages of public housing units.

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<sup>10</sup> See s. 422.04(1), F.S.

<sup>11</sup> In lieu of such taxes or special assessments a housing authority may agree to make payments to a local government for services, improvements or facilities furnished by the entity for the benefit of a housing project owned by the housing authority.

<sup>12</sup> E-mail from Anne Ray, Florida Housing Data Clearinghouse Manager, Shimberg Center for Housing Studies (Jan. 26, 2012) (on file with the Senate Committee on Community Affairs).

<b>Public Housing by Decade<sup>13</sup></b>	
<b>Decade Built</b>	<b>Housing Units</b>
1940-1949	2,991
1950-1959	2,475
1960-1969	5,647
1970-1979	14,442
1980-1989	3,021
1990-1999	1,030
2000-2009	3,759
Total	33,365

The Affordable Housing Commission's 2006 Annual Report highlighted the age and expiration of Florida's affordable housing stock stating that the physical condition and maintenance of older units was a cause for concern.<sup>14</sup> The report went on to outline the parameters of the situation.

From a preservation perspective, the threat to public housing is the ongoing deterioration of an aging stock. Additionally, the physical condition of public housing properties is crucial to the ability of PHAs [Public Housing Authorities] to rent the units and generate revenue. The capital needs of public housing have been chronically under-funded for much of the program's history, and the mechanisms to address maintenance and rehabilitation can be unwieldy. Early in the program's history, too little funding was provided to keep maintenance problems in check and today these long deferred maintenance issues continue to worsen.

### **Florida Housing Finance Corporation**

The Florida Housing Finance Corporation (FHFC)<sup>15</sup> is a state entity primarily responsible for encouraging the construction and reconstruction of new and rehabilitated affordable housing in Florida. It was created in 1997, when the Legislature enacted chapter 97-167, Laws of Florida, to streamline implementation of affordable housing programs by reconstituting the agency as a corporation. The FHFC is a public corporation housed within the Department of Economic Opportunity (DEO), but is a separate budget entity not subject to the control, supervision, or direction of the DEO.<sup>16</sup> Instead, it is governed by a nine member board of directors comprised of the Secretary of DEO, who serves as an ex officio voting member, and eight members appointed by the Governor, subject to confirmation by the Senate.<sup>17</sup>

<sup>13</sup> According to the Florida Housing Data Clearinghouse, the year built is unknown for 2,475 of the units.

<sup>14</sup> The Affordable Housing Study Commission, *A Preservation Strategy for Florida's Affordable Multifamily Housing* (2006) available at <http://www.floridahousing.org/NR/rdonlyres/63332252-F3EA-486A-9F59-B95E7F6CDE56/0/AHSCFinalReport2006.pdf> (last visited Feb. 18, , 2012).

<sup>15</sup> Formerly the Florida Housing Finance Agency.

<sup>16</sup> Section 420.504, F.S.

<sup>17</sup> *Id.*

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;<sup>18</sup>
- 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;
- 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; and
- The Hardest Hit Fund (HHF), established by the U.S. Treasury in 2010, which provides foreclosure prevention assistance through an unemployment mortgage program and a mortgage loan reinstatement program

The FHFC receives funding for its affordable housing programs from documentary stamp tax revenues which are distributed to the State Housing Trust Fund and the Local Government Housing Trust Fund.<sup>19</sup> The FHFC is also authorized to receive federal funding in connection with the corporation's programs directly from the Federal Government.<sup>20</sup> Section 420.509, F.S., allows the FHFC to issue revenue bonds which are payable solely from pledged revenues and shall not be secured by the full faith and credit of the state.

The State Housing Tax Credit Program is outlined in s. 420.5093, F.S. The FHFC establishes procedures necessary for proper allocation and distribution of state housing tax credits, including the establishment of criteria for any single-family or commercial component of a project. The board of directors of the FHFC administers the allocation procedures and determines allocations on behalf of the corporation.

The State Housing Strategy Act, located in Part I, of ch. 420, F.S., was created by the Legislature in 1992 to guarantee adequate affordable housing for Florida residents.<sup>21</sup> Pursuant to s. 420.0003, F.S., the DEO and the FHFC annually coordinate with the Shimberg Center for Affordable Housing at the University of Florida<sup>22</sup> to develop and maintain statewide data on affordable

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<sup>18</sup> Under current law, low interest mortgage loans provided under the SAIL Program are only available for qualifying farm workers, commercial fishing workers, the elderly, and the homeless. *See* s. 420.507(22), F.S.

<sup>19</sup> Sections 201.15(9) and (10), F.S.

<sup>20</sup> *See* ss. 420.507(33) and 159.608, F.S.

<sup>21</sup> Section 420.0003, F.S.

<sup>22</sup> The Shimberg Center was established at the University of Florida in 1988 to "facilitate safe, decent and affordable housing throughout the state of Florida" and was named after Jim Shimberg Sr., a Tampa homebuilder dedicated to affordable housing. The Center's Florida Housing Data Clearinghouse provides public information on Florida housing needs, programs and demographics. For more information visit: <http://www.shimberg.ufl.edu/> (last visited Feb. 18, 2012).

housing needs for specific populations.<sup>23</sup> These studies are then used to review and evaluate existing affordable housing accommodations to ensure that they are consistent with current need assessments and to recommend any improvements or plan modifications.<sup>24</sup>

### **Landlord and Tenant Obligations**

Chapter 83, Florida Statutes governs landlord and tenant issues. A landlord's obligation to maintain premises is outlined in s. 83.51, F.S.,<sup>25</sup> while a tenant's obligation to maintain a dwelling unit is addressed in s. 83.52, F.S.<sup>26</sup> If a landlord accepts rent or if the tenant pays rent with actual knowledge of an obligation noncompliance by the other party, the landlord or tenant waives his or her right to terminate a rental agreement or to bring a civil action for that noncompliance. These provisions do not apply to that portion of rent subsidies received from a local, state, or national government or agency; however, waiver will occur if an action has not been instituted within 45 days of the noncompliance.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 83.56, F.S., to extend the time during which a landlord may institute an action terminating a lease when the landlord has accepted rent subsidies from the government. The time is extended from 45 days after non-compliance to 90 days after the landlord has actual knowledge of the non-compliance.

**Section 2** amends s. 421.02, F.S., to declare that an important public purpose is served by providing access to essential commercial goods and services necessary for daily living for persons served by public housing authorities. Limited transportation capacity and significant family demands are cited as complications for these persons in their access efforts.

**Section 3** amends s. 421.03, F.S., related to definitions. "Essential commercial goods and services" is newly defined to mean goods, such as groceries and clothing, and services, such as child care, K-12 education, financial services, job training and placement, and laundry facilities that are necessary for daily living and that may be difficult for persons of low income to access unless collocated with the housing project where they live and substantially serving persons of low income.

The definition of "housing project" is amended to also include any work or undertaking "to provide access to essential commercial goods and services."

**Section 4** amends s. 421.08, F.S., to preclude a housing authority's power of eminent domain with respect to real property used to provide access to essential commercial goods and services. A housing authority's current power to develop, acquire, lease, construct, rehabilitate, manage, or operate multifamily or single-family residential projects is expanded to also include

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<sup>23</sup> Section 420.0003(4)(c), F.S.

<sup>24</sup> *Id.*

<sup>25</sup> In addition to complying with applicable building, housing, and health codes, landlords must make reasonable provisions for exterminations, garbage removal and functioning facilities for heat during winter, running water, and hot water.

<sup>26</sup> In addition to complying with applicable building, housing, and health codes, tenants must keep premises clean and sanitary and may not destroy, deface, damage, impair, or remove any part of the premises.

commercial projects that allow access to essential goods and services for persons of low income residing in such residential projects.

This section of the bill also provides that any revenue received by a housing authority from the specified commercial projects must be used exclusively to upgrade and improve living conditions in the housing project or to preserve and rehabilitate public or affordable housing managed by the housing authority.

**Section 5** amends s. 421.09, F.S., to make a conforming cross reference.

**Section 6** reenacts and amends s. 421.21, F.S., to update and clarify language.

**Section 7** amends s. 421.32, F.S., to update language and make conforming cross references.

**Section 8** amends s. 422.02, F.S., to update the finding of necessity with regard to housing authorities, to include access of essential commercial goods and services necessary for daily living.

**Section 9** amends s. 422.04, F.S., to expand state public bodies' authority to aid in the planning, undertaking, construction, or operation of certain projects furnished adjacent to or in connection with housing projects. The bill includes commercial projects that allow access to essential goods and services for persons of low income residing in housing projects among the allowable projects. Language is also updated and clarified.

**Section 10** amends s. 423.01, F.S., to declare that facilities made available by housing authorities to provide access to essential goods and services necessary for daily living for persons residing in housing projects are a critical component of those housing projects and constitute a public use and a governmental function, and to expand the current housing authority declaration that related property and debentures may be exempted from tax. .

**Section 11** amends s. 423.02, F.S., to clarify that the tax exemption provided to housing authorities does not apply to activities or property of persons providing essential commercial goods and services, but that the housing authority retains its ad valorem tax exemption for its property.

**Section 12** amends s. 420.507, F.S., to add subsection (48) which allows the FHFC to utilize up to 10 percent of its annual allocation of low-income housing tax credits, nontaxable revenue bonds, and State Apartment Incentive Loan Program (SAIL) funds appropriated by the Legislature and allocated via competitive solicitation for other proposals related to high priority affordable housing projects, including housing to support economic development and job creation, housing for veterans and their families and housing for other special needs populations.

**Section 13** provides an effective date of July 1, 2012.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

Section 18, Art. VII, State Constitution, provides that except upon approval by two-thirds of the members of each house, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989. The tax exemption provisions of this bill would reduce the revenue-raising authority of municipalities and counties and may require a two-thirds vote of the membership of each house of the Legislature.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

On February 17, 2012, the Revenue Estimating Conference reviewed the impact of the provisions of this bill. The Revenue Estimating Conference determined that the provisions of this bill will reduce property taxes, beginning in FY 2014-2015, by \$200,000 statewide.

**B. Private Sector Impact:**

Residents of public housing projects would experience indeterminate transportation savings if the commercial projects proposed by the bill are created on housing authority property.

Depending on the extent that the FHFC exercises its new authority to utilize funding for affordable housing, targeted residents may experience indeterminate costs savings related to increased housing access.

**C. Government Sector Impact:**

Housing authorities would experience an indeterminate reduction in maintenance costs as a result of the new revenue streams to preserve and rehabilitate public housing projects. Local government bodies would incur an indeterminate loss in potential tax revenues due to the exemption provisions of the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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

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

**CS/CS by Subcommittee on Finance and Tax on February 23, 2012:**

- Clarifies that providers of essential commercial goods and services do not receive the tax exemptions provided to housing authorities, but that housing authority property remains exempt from ad valorem tax.

**CS by Community Affairs on January 30, 2012:**

- Revises provisions for terminating a rental agreement that involves rent subsidies received from a local, state or national government.
- Allows the FHFC to utilize up to 10 percent of certain annual tax credits, revenue bonds, and loan funds for specified high priority affordable housing projects.

**B. Amendments:**

None.