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 Committee on Community Affairs

BILL: SB 928

INTRODUCER: Senator Simpson

SUBJECT: Community Development

DATE: March 10, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	**Pre-meeting**
2.			AFT	
3.			AP	
4.				
5.				
6.				

I. Summary:

SB 928 modifies the process used by the Florida Housing Finance Corporation (FHFC) to allocate low-income housing tax credits and other federal and state resources. The bill revises FHFC annual reporting requirements, clarifies the information and reports included in its audited financial statements, and requires the Auditor General to conduct an operational audit of the corporation by the end of 2016. The bill also requires the FHFC to comply with state provisions on per diem and travel expenses.

In addition, the bill deletes an ad valorem tax exemption for certain limited partnerships that provide affordable housing, extends the Community Contribution Tax Credit to 2025, and repeals the statutory authority for the obsolete Homeownership and Opportunity for People Everywhere (HOPE) program.

This bill substantially amends the following sections of the Florida Statutes: 196.1978, 212.08, 220.183, 420.0003, 420.0006, 420.504, 420.506, 420.507, 420.5087, 420.511, and 624.5105,

This bill repeals section 420.5091 of the Florida Statutes.

II. Present Situation:

Florida Housing Finance Corporation

The FHFC is the state entity primarily responsible for encouraging the investment of private capital in residential housing and stimulating the construction and rehabilitation of affordable housing in Florida.[1] Originally, federal funds were the only resources that funded housing programs administered by the FHFC. To leverage these federal funds, in the late 1980s the Legislature appropriated funding for state programs. The FHFC administers a number of multifamily and single family housing programs, such as the State Apartment Incentive Loan Program, Florida Affordable Housing Guarantee Program, and the First Time Homebuyer Program, that assist Floridians in obtaining safe, decent affordable housing.

Chapter 2012-127, Law of Florida: Audit and Review of the FHFC
In 2012, the Legislature directed the Auditor General and the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct a joint audit and review of the programs and operations of the FHFC and to submit written reports to the Legislature no later than December 1, 2012.[2] Both reports were issued November 2012. The Auditor General's report addressed the FHFC's internal management and financial and operational controls and included recommendations. OPPAGA's report examined the corporation's governance structure, decision-making, and performance and identified areas for improvement.

Included in the Auditor General's report were recommendations that the FHFC revise its travel policy to conform to the requirements of state law and that the Legislature consider modifying s. 420.511(4), F.S., to identify specific FHFC programs that should be subject to an annual compliance audit.[3] Additional findings recommended the FHFC modify internal operations and/or procedures and did not require statutory modifications. The FHFC has either further explained the rationale for its operating procedures or has agreed with and adopted the Auditor General's recommendations.[4]

OPPAGA's report examined the FHFC's governance structure, decision-making, and performance and identifies areas for improvement.[5] OPPAGA report summary stated:

> The Florida Housing Finance Corporation's board and executive director, the Governor, and the Legislature have roles in overseeing and directing corporation programs and staff. We found no compelling reason to change the current governance structure. However, to expand its role and enhance communication with the corporation, the Legislature could consider amending state law to provide for board appointments by the President of the Senate and the Speaker of the House of Representatives.
>
> A major focus of the corporation's decision-making is distributing federal low-income housing tax credits for affordable rental housing developments. To address concerns about the process, we suggest that the corporation consider reducing the frequency of rule

[1] Section 420.502(7), F.S. The FHFC was created as a public corporation within the Department of Economic Opportunity (DEO). However, the FHFC is a separate budget entity and is not subject to the control, supervision, or direction of DEO.
[2] Section 3, ch. 2012-127, L.O.F.
[3] State of Florida, Auditor General, *Florida Housing Finance Corporation – Audit Performed Pursuant to Chapter 2012-127, L.O.F.*, Report No. 2013-047, November 2012, *available at* http://www.myflorida.com/audgen/pages/pdf_files/2013-047.pdf. (last visited Mar. 10, 2013).
[4] *Id*.
[5] The Florida Legislature, Office of Program Policy Analysis and Government Accountability, *The Florida Housing Finance Corporation Could Improve Its Tax Credit Allocation Process and Develop Better Performance Measures*, November 2012, Report No. 2012-10, available at http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1210rpt.pdf (last visited Mar. 10, 2013).

development workshops; revising the time allowed for applicants to identify problems with each other's projects; and increasing the emphasis on considering market feasibility and project costs.

Most of the corporation's performance measures provide information on program outputs rather than program outcomes or cost-effectiveness. To enhance the quality and utility of the data the corporation reports, the Legislature could consider expanding the statutorily required performance measures.[6]

FHFC Powers Related to the Allocation of Low-income Housing Tax Credits, the State Apartment Incentive Loan Program, and Other Federal or State Resources

Florida law grants the FHFC specific powers necessary to carry out activities or implement programs to provide affordable housing.[7] Included in such authority is the FHFC's power to use up to 10 percent of its annual allocation of low-income housing tax credits, nontaxable revenue bonds, and State Apartment Incentive Loan Program (SAIL)[8] funds appropriated by the Legislature. FHFC may allocate available funds by requests for proposals or other competitive solicitation for high-priority affordable housing projects, such as housing to support economic development and job-creation initiatives, housing for veterans and their families, and other special needs populations as determined by the FHFC on an annual basis.[9]

Additionally, the Legislature has granted authority to the FHFC to establish, by rule, the procedure for evaluating, scoring, and competitively ranking all applications based on the criteria established under the SAIL Program.[10]

Process for Awarding Low-Income Housing Tax Credits and Other Funds

Currently, the FHFC allocates tax credits through a Universal Application Cycle that includes the allocation of other federal and state resources, depending on the availability of funds. In recent years, tax credits have provided the bulk of resources for rental housing developments.[11] According to the FHFC and documented by OPPAGA, the FHFC's process to allocate low-income housing tax credits occurs in four stages: rulemaking, application, underwriting, and construction and closing. For the last two cycles (2009 and 2011), the time taken to complete the process from the first rule development workshop hearing to the approval of final project rankings ranged from 12 to 14 months.[12] After the FHFC's Board of Directors approves final project rankings, developers are invited to credit underwriting, which can take an additional nine months.[13] The lengthy process increases the costs for both the FHFC and developers. According

[6] *Id*. at 1.
[7] *See* ss. 159.608 and 420.507, F.S.
[8] The SAIL Program annually provides low interest loans on a competitive basis to for-profit, nonprofit, and public entities to provide affordable housing to very-low-income persons. Program funds provide gap financing to allow developers to obtain the full financing needed to construct multifamily units. Special consideration is given to properties that target specific demographic groups such as the elderly, the homeless, families, and commercial fishing workers and farmworkers. *See* s. 420.5087, F.S., and Florida Housing Finance Corporation, *A Summary of Florida Housing's Programs*, *available at* http://www.floridahousing.org/FH-ImageWebDocs/AboutUS/ProgramSummaries.pdf (last visited Mar. 10 2013).
[9] Section 420.507(48), F.S.
[10] Section 420.507(22), F.S.
[11] *Supra* note 18 at 5.
[12] *Id*. at 6.
[13] *Id*.

to OPPAGA, some stakeholders like the FHFC's open and transparent rulemaking and application process while others have expressed concern about the complexity of the process.[14]

FHFC Reporting Requirements: Business Plan, Strategic Plan, and Annual Report

The FHFC is required to develop a business plan for the provision of affordable housing in the state. The business plan must be consistent with the strategic plan[15] and must contain certain performance measures and specific performance targets.[16] A strategic plan for the provision of affordable housing relating to the state and regional planning requirements in ch. 186, F.S., is required to be developed annually, in equal partnership with DEO.

The FHFC is also required to submit to the Governor and the Legislature, within 2 months after the end of its fiscal year, a complete and detailed report, which provides the following information:[17]

- operations and accomplishments;
- receipts and expenditures during its fiscal year in accordance with the categories or classifications established by the FHFC for its operating and capital outlay purposes;
- assets and liabilities at the end of its fiscal year and the status of reserve, special, or other funds;
- a schedule of its bonds outstanding at the end of its fiscal year, together with a statement of the principal amounts of bonds issued and redeemed during the fiscal year; and
- information relating to the FHFC's activities in implementing the SAIL Program, the Florida Homeownership Assistance Program (HAP),[18] and the Community Workforce Housing Innovation Pilot Program.[19]

The report must include, but not be limited to:[20]

- the number of people served, delineated by income, age, family size, and racial characteristics;
- the number of units produced under each program;
- the average cost of producing units under each program;
- the average sales price of single-family units financed under the Florida Homeownership Assistance Program;
- the average amount of rent charged based on unit size on units financed under the SAIL Program;
- the number of persons in rural communities served under each program;
- the number of farmworkers served under each program;
- the number of homeless persons served under each program;

[14] *Id.* at 7.
[15] "Strategic plans" in ch. 186, F.S., were renamed "long-range program plans" pursuant to ch. 2000-371, L.O.F. Each state agency is required to develop a long-range program plan on an annual basis. The plan must provide the framework and context for designing and interpreting the agency budget request. The plan will be developed through careful examination and justification of agency functions and their associated costs. It must be used by the agency to implement the state's goals and objectives. Indicators must be developed to measure service and activity performance. *See* s. 186.021, F.S.
[16] Section 420.511(1), F.S.
[17] Section 420.511(3)(a), F.S.
[18] *See* s. 420.5088, F.S.
[19] *See* s. 420.5095, F.S.
[20] Section 420.511(3)(b), F.S.

- the number of elderly persons served under each program;
- the extent to which geographic distribution has been achieved in accordance with the provisions of the SAIL Program;
- the success of the Community Workforce Housing Innovation Pilot Program in meeting the housing needs of eligible areas; and
- any other information the FHFC deems appropriate.

The FHFC must also submit a copy of an annual financial audit of its accounts and records and an annual compliance audit of its programs conducted by an independent certified public accountant performed in accordance with generally accepted auditing standards and government auditing standards.[21] Both FHFC's business plan and annual report must recognize the different fiscal periods under which the FHFC, the state, the Federal Government, and local governments operate.[22]

Affordable Housing Property Exemptions

The Florida Constitution provides no exception to the just value standard for assessment of property in affordable housing programs. Under s. 193.017, F.S., in assessing property in the Low-Income Housing Tax Credit Program, neither the tax credits nor the financing generated by the tax credits may be considered income to the property, and the actual rental income from rent-restricted units may be recognized by the property appraiser. Under s. 196.1978, F.S., property that provides affordable housing for income-eligible individuals and families and is owned entirely by a charitable nonprofit entity under federal criteria or by a Florida-based limited partnership, the sole general partner of which is a charitable nonprofit entity under federal criteria, is considered property owned by an exempt entity for charitable purposes, making it eligible for an ad valorem tax exemption to the extent authorized in s. 196.196, F.S.

A limited partnership is a type of partnership comprised of one or more general partners who manage a business and who are personally liable for partnership debts, and one or more limited partners who contribute capital and share in profits but who take no part in running the business and incur no liability with respect to partnership obligations beyond contributions.[23] The provision of s. 196.1978, F.S., related to Florida-based limited partnerships was enacted by ch. 2009-96, Laws of Florida, and subsequently reenacted by ch. 2011-15, L.O.F. Since then, FHFC affordable housing developers have been able to replace an existing general partner with a separate and distinct limited liability company created to serve as a new charitable nonprofit general partner. The existing general partner is able to remain as a newly created special limited partner with existing guarantees and guarantors remaining in place.

Affordable Housing Funding Programs Serving Persons and Households with Special Needs

Applicants requesting tax credits from FHFC are offered incentives to set aside 10 percent of the total units for which they are applying for extremely low-income (ELI) households.[24] Through its Link Initiative, FHFC requires applicants to commit to reserving 50 percent of those ELI units

[21] Section 420.511(4), F.S.
[22] Section 420.511(5), F.S.
[23] BLACK'S LAW DICTIONARY (6th ed. 1990).
[24] Florida Housing Finance Corporation, *Special Needs Housing Website: Link Initiative, available at* http://www.floridahousing.org/SpecialNeeds/ (last visited Mar.11, 2013).

for special needs households, defined as households consisting of homeless families, survivors of domestic violence, persons with a disability, or youth aging out of foster care.[25] Upon the awarding of a tax credit, a developer selects a special needs population to serve and contacts a FHFC sanctioned referral agency listed for that population. The referral agency ensures that special needs households targeted for the units are receiving community based supportive services; prepared to live in an independent living environment; and are able to pay the determined rent and other costs for the available unit.

HOPE Program

The Homeownership and Opportunity for People Everywhere (HOPE) program was created in 1990 by the Cranston-Gonzalez National Affordable Housing Act to help low-income people buy public housing units by providing funds that nonprofit organizations, resident groups, and other eligible grantees can use to develop and implement homeownership.[26] One part of this program provided funds through an annual national competition to provide for conversion of federally subsidized rental units and abandoned and vacant multifamily properties into home ownership units to be sold to very-low-income and low-income households. A 33 percent match of the federal funds was required to be provided by state or local government. Chapter 92-317, L.O.F., established the HOPE Program in s. 420.5091, F.S., and authorized the FHFC to promulgate rules for the funding match. HOPE was never funded.

Community Contribution Tax Credit Program

In 1980, the Florida Legislature established the Community Contribution Tax Credit Program (Program) to encourage private sector participation in revitalization and housing projects.[27] The Program offers tax credits, in the form of a refund, to persons who donate to sponsors who have been approved to participate in the Program. Eligible project sponsors[28] under the Program include a wide variety of community organizations, housing organizations, historic preservation organizations, units of state and local government, and regional workforce boards. Eligible projects[29] include the construction, improvement or rehabilitation of housing, commercial, industrial or public facilities, and projects that promote entrepreneurial or job development opportunities for low-income persons. A community contribution must be in the form of cash or other liquid assets; real property; goods or inventory; or other physical resources as identified by the Department of Economic Opportunity (DEO).[30]

DEO is responsible for marketing the Program in consultation with the Florida Housing Finance Corporation and other statewide and regional housing and financial intermediaries.[31] DEO is also responsible for administering the Program by reviewing sponsor project proposals and tax credit

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[25] *See* s. 420.0004, F.S.
[26] *See* United States Department of Housing and Urban Development, *HOPE VI, available at* http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/hope6 (last visited Mar. 11, 2013) and Florida Housing Finance Corporation Staff Document (Mar. 11, 2013) (on file with the Senate Committee on Community Affairs).
[27] Chapter 80-249, L.O.F.
[28] *See* ss. 212.08(5)(p)2.c., F.S.; 220.183(2)(c), F.S.; and 624.5105(2), F.S.
[29] *See* ss. 212.08(5)(p)2.b.; and 220.183(2)(d), F.S. *See* also s. 220.03(1)(t), F.S.
[30] Sections 212.08(5)(p)2.a., F.S.; 220.183(2)(a), F.S.; and 624.5105(5)(a), F.S.
[31] Section 220.183(4), F.S.

applications. To date, 131 sponsors have been approved to participate in the Program.[32] After the taxpayer receives approval for community contribution tax credits, it must claim the credit from the Department of Revenue (DOR).

The tax credits are equal to 50 percent of the amount donated up to $200,000 annually.[33] The tax credit may be applied toward the donor's sales and use, corporate, or insurance premium tax obligations.[34] The taxpayer may only apply the credits toward one tax obligation. Unused credits against corporate income taxes and insurance premium taxes may be carried forward for five years.[35] Unused credits against sales taxes may be carried forward for three years.[36]

The total amount of tax credits, which may be granted for the Community Contribution Tax Credit Program, is $10.5 million annually for projects that provide homeownership opportunities for low-income and very-low-income households and $3.5 million for all other projects.[37] During FY 2011-2012, 333 tax credit applications in 63 local governments were approved by DEO.[38]

The Florida Legislature has amended the dollar cap and the expiration date of the Program on numerous occasions. The Program began with an annual $3 million cap, is currently $14 million, and has reached the cap every fiscal year. The Community Contribution Tax Credit Program expires June 30, 2015.

III. Effect of Proposed Changes:

Section 1 amends s. 196.1978, F.S., to delete an ad valorem taxation exemption for property owned entirely by a Florida-based limited partnership, the sole general partner of which is a charitable nonprofit entity under federal criteria.

Section 2 amends s. 212.08, F.S., to extend the expiration date of the application of the community contribution tax credit against the sales and use tax to June 30, 2025.

Section 3 amends s. 220.183, F.S., to extend the expiration date of the application of the community contribution tax credit against the corporate income tax to June 30, 2025.

Section 4 amends s. 624.5105, F.S., to extend the expiration date of the application of the community contribution tax credit against the insurance premium tax to June 30, 2025.

Section 5 amends s. 420.507, F.S., relating to the powers of the corporation, to clarify the procedure for competitively evaluating and selecting all applications for funding. This section also bifurcates the current 10 percent annual allocation of low-income housing tax credits, nontaxable revenue bonds, and State Apartment Incentive Loan Program funds dedicated to

[32] Florida Department of Economic Opportunity, *Community Contribution Program Staff Document* (Jan 18, 2013) (on file the Senate Committee on Community Affairs).
[33] Sections 220.183 (1)(a) and (b), F.S.; 212.08(5)(p).
[34] *See* ss. 212.08(5)(p), F.S.; 220.183, F.S.; and 624.5105, F.S.
[35] Sections 220.183(1)(e), F.S.; and 624.5105, F.S.
[36] Section 212.08(5)(p)1.b., F.S.
[37] Sections 212.08(5)(p)1.e., F.S.; 220.183(1)(c), F.S.; and 624.5105(1)(c), F.S.
[38] *See* supra note 6.

certain high priority housing projects. Five percent would continue to be reserved for projects that support economic development and job-creation initiatives, housing for veterans and their families, and other special needs populations.

The other five percent would be reserved for projects that target persons who have a disabling condition and their families. These allocations must prioritize projects or initiatives piloting or demonstrating cost effective, best practices that meet the housing needs and preferences of such persons. Any tax credits or funds not allocated because of a lack of eligible projects targeting persons who have a disabling condition shall be distributed by the FHFC for high-priority housing projects.

Section 6 amends s. 420.5087(6), F.S., relating to the SAIL Program, to clarify the procedure for competitively evaluating and selecting all applications for funding.

Section 7 amends s. 420.511, F.S., relating to the FHFC's annual reporting and auditing requirements, to require additional information for inclusion in the FHFC's annual report to the Governor and the Legislature including:

- households served, delineated by income, race, ethnicity, and age of the head of household,
- households served in large, medium, and small counties,
- homeless and special needs households served,
- by county, the average rent charged based on unit size,
- the number of rental units to which resources have been allocated,
- the estimated average cost of producing units,
- the percentage of homeownership loans that are in foreclosure,
- the percentage of properties in the corporation's rental portfolio which have an occupancy rate below 90 percent,
- the amount of economic stimulus created by affordable housing finance programs,
- a list of all closed loans outstanding at the end of the fiscal year for the SAIL program, and
- a list of all guaranteed loans for the Florida Affordable Housing Guarantee program

This section also revises provisions relating to the annual financial audit to specify what information must be included in the audited financial statements and requires the Auditor General to conduct an operational audit of the FHFC by the end of 2016. Per this section, FHFC reports and audits are due six months after the end of the fiscal year. Language made obsolete because of changes to s. 420.511, F.S., is removed.

Section 8 amends s. 420.0003, F.S., relating to the implementation of the housing strategy, to conform cross-references.

Section 9 amends s. 420.0006, F.S., relating to the authority to contract with the corporation; contract requirements; and nonperformance, to conform cross-references.

Section 10 amends s. 420.504 (1), F.S., relating to public corporation; creation; membership; terms; and expenses to conform cross-references.

Section 11 amends s. 420.506, F.S., relating to executive director; agents and employees; inspector general to require the FHFC to comply with state provisions on per diem and travel expenses as outlined in s. 112.061(6) and (7), F.S.

Section 12 repeals s. 420.5091, F.S., relating to the HOPE Program which has never been funded.

Section 13 provides that this act shall take effect upon becoming a law and shall first apply to the 2013 ad valorem tax rolls.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Available tax credits under the Community Contribution Tax Credit Program may be taken against sales and use taxes, corporate income taxes, and insurance premium taxes. The bill may have a negative fiscal impact of up to $14 million annually for ten years beginning in FY 2015-16, depending on the use of the tax credits.

B. Private Sector Impact:

Eligible project sponsors in the Community Contribution Tax Credit Program may continue to receive contributions through 2025. Likewise, taxpayers may continue to receive tax credits for their contributions. The current program cap is $14 million.

Charitable, nonprofit Florida-based limited partnerships currently receiving ad valorem tax exemptions for their affordable housing projects would no longer receive such exemptions. The fiscal impact would vary with each project.

C. Government Sector Impact:

The Revenue Estimating Conference (REC) met to review the impact of both the Community Contribution Tax Credit Program and the affordable housing tax exemption provisions made by the bill.

Community Contribution Tax Credit Program[39]
Extending tax credit program claims against sales and use tax, corporate income tax, or insurance premium tax is estimated to have a negative recurring impact of between the $12 million and $14 million. The table below details the negative recurring fiscal impact numbers.

	High Cash	High Recurring	Low Cash	Low Recurring
2013-14				
2014-15				
2015-16	($14 million)	($14 million)	($12 million)	($12 million)
2016-17	($14 million)	($14 million)	($12 million)	($12 million)
2017-18	($14 million)	($14 million)	($12 million)	($12 million)

Affordable Housing Property Tax Exemption[40]
Affordable housing developments financed partially by the FHFC are required to seek approval before they transfer housing interests to a non-profit, limited partnership. The REC estimated the tax loss to local governments from eligible developments that could request the limited partnership status and qualify for the exemption. It is assumed that knowledge of this exemption and the subsequent transferring of the property to a limited-partnership would take time.

The bill's elimination of the property tax exemption for affordable housing owned by a Florida-based limited partnership is estimated to represent a positive fiscal impact to local governments. The table below details the consensus positive recurring fiscal impact numbers.

	Local Cash	Local Recurring
2013-14	$23.4 million	117.2 million
2014-15	$48.5 million	$121.3 million
2015-16	$75.7 million	$126.2 million
2016-17	$106 million	$132.5 million
2017-18	$140.9 million	$140.9 million

VI. Technical Deficiencies:

Lines 638-639 reference the "Department of Economic Services." This should be the "Department of Economic Opportunity."

[39] Office of Economic and Demographic Research, The Florida Legislature, *Analysis of HB 437: Community Contributions Tax Credits Extension* (Feb. 11, 2013), *available at* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2013/pdf/page62-64.pdf (last visited Mar. 10, 2013).
[40] Office of Economic and Demographic Research, The Florida Legislature, *Analysis of SB 740: Affordable Housing* (Feb. 22, 2013), *available at* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2013/pdf/page92-95.pdf (last visited Mar. 10, 2013).

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.)

None.

B. Amendments:

None.