

STORAGE NAME: h3287s1.ca

DATE: February 11, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 3287

RELATING TO: Affordable Housing (Glitch Bill)

SPONSOR(S): Committee on Community Affairs and Representative Gay

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMUNITY AFFAIRS YEAS 7 NAYS 0
 - (2) TRANSPORTATION AND ECONOMIC DEVELOPMENT APPROPRIATIONS
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

House Bill 3287 is a glitch bill which clarifies language and updates the 1997 action by the legislature which reconstituted the Florida Housing Finance Agency (FHFA) as the Florida Housing Finance Corporation (FHFC).

There are approximately 20 technical changes to the bill that clarify numerous issues. In addition, several substantive changes, that more clearly outline intent within the chapter are included.

In the event that the FHFC does not comply with performance measures outlined in their 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 sufficient to meet the debt service requirements of the FHFC.

The FHFC is also exempt from providing notice through means of publication for internal review committee meetings for competitive proposals or procurement. Instead, they are permitted to send notice to applicants by mail or facsimile.

The bill provides that the FHFC is an instrumentality of the State of Florida.

The bill allows the FHFC to mortgage any real or personal property owned by the FHFC.

Also included are disciplinary procedures for FHFC program applicants that have been involved in fraudulent actions.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The Legislature reconstituted the Florida Housing Finance Agency (FHFA) as the Florida Housing Finance Corporation (FHFC) during the 1997 legislative session. This action streamlined the implementation of affordable housing programs in Florida. The corporation is now a public corporation and public body corporate and politic. Their role is as an entrepreneurial public corporation organized to provide and promote the public welfare by administering the governmental functions of financing and refinancing housing and related facilities in Florida.

The legislation transferred all of the Agency's assets and liabilities to the FHFC. The FHFC continues to perform most of the functions traditionally performed by the FHFA. Under the new structure, the Department of Community Affairs (DCA) contracts with the FHFC on a multi-year basis to administer state housing programs. The corporation is required to maintain a business plan, which includes performance measures and targets.

The FHFC consists of a board of directors composed of the DCA Secretary as an ex officio and voting member and eight members appointed by the Governor, subject to confirmation by the Senate.

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.

Bond financing is one of the primary vehicles utilized by the FHFC to provide affordable housing opportunities in the State of Florida. Prior to 1997, as a subdivision of a state agency, the FHFA could readily participate in the state pool allocation for private activity bonds as required by section 159.807(4)(a) F. S. Currently, it is unclear if the FHFC is still a state agency for purposes of the aforementioned section.

B. EFFECT OF PROPOSED CHANGES:

House Bill 3287 is a glitch bill which clarifies language and updates the 1997 action by the legislature which reconstituted the Florida Housing Finance Agency (FHFA) as the Florida Housing Finance Corporation. (FHFC)

There are approximately 20 technical changes to the bill that clarify numerous issues. In addition, several substantive changes, that more clearly outline intent within the chapter are included.

In the event that the FHFC does not comply with performance measures outlined in their 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 sufficient to meet the debt service requirements of the FHFC.

The FHFC is also exempt from providing notice through means of publication for internal review committee meetings for competitive proposals or procurement. Instead, they are permitted to send notice to applicants by mail or facsimile.

The bill provides that the FHFC is an instrumentality of the State of Florida.

The bill allows the FHFC to mortgage any real or personal property owned by the corporation.

Also included are disciplinary procedures for FHFC program applicants that have been involved in fraudulent actions.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The bill clarifies the powers of the newly instituted Florida Housing Finance Corporation. These powers include the ability of the FHFC Board to set rules which govern processes by which service providers may obtain funding through the corporation.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

The statutes affected are as follows: Sections 420.0005, 420.006, 420.503, 420.504, 420.507, 420.5087, 420.5088, 420.5089, 420.509, 420.511, 420.512, 420.528, 420.9071, 420.9073, 420.9079 and 420.504(8), Florida Statutes.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Section 420.0005, Florida Statutes is amended to add a reference to section 420.504(3), Florida Statutes. In addition, the words "State Housing" are inserted prior to the word "Fund" throughout section 420.0005, Florida Statutes.

Section 2. Section 420.0006, Florida Statutes, is amended to add a requirement that the contract between DCA and the FHFC be consistent with the corporation's strategic plan which is prepared in accordance with s. 420.511, Florida Statutes. Furthermore, the section is amended to include that the Office of the Comptroller shall provide advances to the corporation to meet debt service requirements of the corporation. This action is taken at the request of the Governor, absent a finding by the Comptroller that providing such advances adversely impact the state.

Section 3. Subsection (35) of section 420.503, Florida Statutes, is amended to clarify that the term "fiscal year" refers to the "fiscal year of the corporation."

Section 4. Subsections (1), (2), and (9) of section 420.504, Florida Statutes, are amended to delete the words "an annual" and insert the word "a" in reference to the contract between the FHFC and the DCA. In addition, the corporation is deemed an instrumentality of the state. Finally, the definition of recklessness is removed.

Section 5. Section 420.5061, Florida Statutes is amended to include the words " The corporation is a state agency for purposes of section 159.807(4)(a)."

Section 6. Subsections (27), (29) and (30) of section 420.507, Florida Statutes, are amended and subsections (34) and (35) are added to said section. Subsection (27) is amended to refer to chapter 282, Florida Statutes. Subsection (29) is amended to insert the words "to mortgage such property,". Subsection (30) is amended to delete the words "each of which shall be classified as a special category appropriation." Subsection (34) inserts the words "To establish the corporations fiscal year." Subsection (35) restricts service providers that have been engaged in fraudulent activities from applying for corporation programs for a period up to two years.

Section 7. Subsection (7) of section 420.5087, Florida Statutes, is amended to insert the word "state" prior to the words fiscal year for clarification purposes.

Section 8. Subsection (4) of section 420.5088, Florida Statutes, is amended to insert the words "fund availability" in lieu of the words "each fiscal year."

Section 9. Subsection (1) of section 420.5089, Florida Statutes, is amended to remove a contingency related to the availability of state funds for projects funded by the program beyond the fiscal year in which they were appropriated.

Section 10. Paragraph (a) of subsection (12) of section 420.509, Florida Statutes, is amended by inserting the words "Subject to paragraph (b)," and "with the corporation performing the duties of the board as provided in such section."

Section 11. Subsections (1) and (3) of section 420.511, Florida Statutes, is amended to move a provision related to collecting data on the stimulus of economic activity created by affordable housing finance programs as a performance target for the business plan; provides that this information is compiled by the corporation. In addition, the FHFC must deliver a final report within 2 months of completing the corporation's fiscal year.

Section 12. Subsection (5) of section 420.512, Florida Statutes, is amended to clarify the definition of service provides for paragraphs (a), (b) and (c). In addition, the words "member of the State Board of Administration" were inserted in lieu of the words "Cabinet Position."

Section 13. Subsection (2) of section 420.528, Florida Statutes, is amended to clarify that fiscal year refers to the corporation's fiscal year.

Section 14. Subsections (4) and (23) of section 420.9071, Florida Statutes, are amended to correct a citation. The number 5 is inserted in lieu of the number 813. In addition, the word "state" is inserted prior to fiscal year.

Section 15. Subsection (3) of section 420.9073, Florida Statutes, is amended to insert the word "state" prior to the words fiscal year.

Section 16. Subsection (2) of section 420.9079, Florida Statutes, is amended to insert the word "state" prior to the words fiscal year.

Section 17. Subsection (8) of section 420.504, Florida Statutes, is repealed. This section relates to limiting the liability of board members.

Section 18. This act shall take effect upon becoming law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. **APPLICABILITY OF THE MANDATES PROVISION:**

The bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

The bill does not reduce the authority that local governments have to raise revenues in the aggregate.

C. **REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

The bill does not reduce the percentage of state tax shared with local governments.

V. **COMMENTS:**

According to a letter from Tom Tedcastle, Director of House Bill Drafting and House Co-counsel, sovereign immunity cannot be granted by the Florida Legislature. His legal opinion regarding the sovereign immunity issue, dated January 9, 1998 is attached.

VI. **AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

A committee substitute was adopted by the House Committee on Community Affairs on February 4, 1998. The committee substitute incorporated the following three changes to the bill as originally filed:

To conform the bill with Mr. Tedcastle's opinion and recommendations, language that previously granted the corporation sovereign immunity was changed to provide that the Florida Housing Finance Corporation is an instrumentality of the state.

Section 420.5061, Florida Statutes is amended to include the words "The corporation is a state agency for purposes of section 159.807(4)(a)."

Section 420.0006, Florida Statutes is amended to add a requirement that the contract between DCA and the FHFC be consistent with the corporation's strategic plan which is prepared in accordance with s. 420.511, Florida Statutes.

VII. **SIGNATURES:**

COMMITTEE ON COMMUNITY AFFAIRS:
Prepared by:

Legislative Research Director:

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