

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 2310

SPONSOR: Fiscal Resource Committee, Comprehensive Planning, Local and Military Affairs Committee and Senator Kurth

SUBJECT: Ad Valorem Taxation

DATE: April 25, 2000 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bowman</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable/CS</u>
2.	<u>Fournier</u>	<u>Wood</u>	<u>FR</u>	<u>Favorable/CS</u>
3.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
4.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
5.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>

## I. Summary:

The CS makes a number of changes to affordable housing programs:

- Increase the percentage of the state private activity bond allocation going to regional pools from 50 percent to 60 percent, and decreases the percentage going to the Florida First Business allocation pool from 20 percent to 10 percent. The time within which an allocation must be used by an issuer that receives an allocation from a regional pool is increased from 90 to 155 days. Extends the time period for utilization of the state private activity pool and the Florida First Business Pool for priority projects from April 1 to June 1.
- Clarifies the affordable housing exemption to ad valorem taxes created by s. 196.1978, F.S., to add property used to provide affordable housing to persons having eligible incomes as defined by s.159.603(7), F.S., (for the purpose of housing authorities), as eligible to the exemption in addition to projects providing affordable housing to persons defined by s. 420.004, F.S. Clarifies the reference to s. 420.004, F.S., as it relates to persons meeting certain income limits defined as very low-income and low-income income for purposes of determining whether an affordable housing property is exempt from ad valorem taxation.
- Provides specific rule-making authority for the Florida Housing Finance Corporation to reserve future allocation or funding to provide a remedy for an applicant that appeals the status of its application.
- Increases the maximum total amount of revenue bonds which may be issued to fund the Florida Affordable Housing Guarantee Program from \$200 to \$300 million.
- Changes the Predevelopment Loan Program to allow the Florida Housing Finance Corporation to forgive certain loans and convert the loans to grants if the sponsor is unable to obtain financing for the development.

- Changes the reporting date of the Affordable Housing Study Commission from December 31st to July 15th of each year and adds the executive director of the corporation as a recipient of the report.
- Changes the method of calculation of annual gross income under the SHIP program by annualizing verified sources of income instead of projecting prevailing rate of income and changes the definition of “sales price” for purposes of the program. In addition, allows another governmental entity than an entity implementing a local housing assistance plan to monitor tenant eligibility.
- Amends the Florida Fair Housing Act to prohibit discrimination in land use decisions or in the permitting of development based on the source of financing of the development, in addition to race, color, national origin, sex, disability, familial status or religion.
- Establishes a State Farmworker Housing Pilot Loan Program where the corporation makes farmworker housing loans to an eligible sponsor. Provides that any funds appropriated to the program that are unencumbered at the end of the fiscal year shall be transferred to the Department of Children and Families to distribute to local coalitions for the homeless.
- Repeals the State Housing Tax Credit Program.

This CS amends ss. 159.804, 159.805, 159.806, 159.807, 159.8083, 159.809, 159.813, 196.1978, 420.507, 420.5092, 420.5099, 420.526, 420.609, 420.9071, 420.9075, 220.02, and 220.13, F. S. In addition, the CS creates s. 760.26, F.S, and repeals s. 220.185 and 420.5093, F.S.

## **II. Present Situation:**

### Background

The Florida Legislature established in s. 420.0003(2), F.S., the goal that by the year 2010, “this state shall ensure that decent and affordable housing is available for all its residents.” Affordable housing is statutorily defined to mean that monthly rents or mortgage payments do not exceed 30 percent of a very low-income, low-income, or moderate income household’s income. Section 420.0003, F.S., contains the state housing strategy to achieve this goal.

In addition to a variety of federally and locally funded affordable housing programs, the Florida Legislature has created and funded several programs designed to achieve the state’s affordable housing goal. In 1992, the Legislature dramatically increased its commitment to the provision of affordable housing with passage of the William E. Sadowski Act (chapter 92-317, L.O.F.), which earmarked a portion of the state’s documentary stamp taxes for affordable housing. These funds are appropriated to fund a variety of state and local affordable housing programs.

### Florida Housing Finance Corporation

The Florida Housing Finance Corporation administers most of the state’s affordable housing programs and oversees the State Housing Initiatives Partnership Program (SHIP) through which

local governments receive documentary stamp tax revenues. Programs administered through the Corporation include:

- State Apartment Incentive Loan (SAIL) Program;
- State Housing Initiatives Partnership (SHIP) Program;
- Low Income Rental Housing Tax Credit (LIHTC) Program;
- HOME Investment Partnerships (federally funded);
- Predevelopment Loan Program (PLP);
- Multifamily Mortgage Revenue Bond Program;
- Florida Home Ownership Assistance Program (HAP);
- Single Family Mortgage Revenue Bond Program.

#### Private Activity Bonds

Amendments to the Internal Revenue Code of 1954 authorized state and local governmental units to finance housing through the issuance of tax exempt bonds. The Internal Revenue Code of 1986 placed several restrictions on the use of tax-exempt bond financing for community development projects, including affordable housing projects. The Internal Revenue Code allows each state to issue tax exempt private activity bonds. However, the volume allotted each state is limited. The federally-imposed statewide volume limitation on private activity bonds includes bonds issued for manufacturing facilities, single-family housing, multi-family housing, pollution control facilities, solid waste disposal facilities, water and sewer facilities, distribution facilities, and redevelopment projects. As a result, tax-exempt bonds issued by local housing finance authorities, other than certain refunding bonds, are limited by the state's private activity bond allocation cap.

Section 146 of the Internal Revenue Code of 1986 provides for the state volume limit on tax-exempt private activity bonds and provides for the allocation of the statewide volume cap to state agencies and non-state agencies. The section allows states to adopt their own formula for allocating the state ceiling among governmental units having the authority to issue tax-exempt private activity bonds. The Florida Legislature elected to adopt its own allocation formula. Part VI of chapter 159, F.S., provides for the allocation of the state volume limitation imposed on private activity bonds through the use of allocation pools. The Division of Bond Finance of the State Board of Administration is responsible for the allocation of the federally imposed ceiling on private activity bonds issued within the state.

Chapter 95-416, L.O.F., created s.159.8083, F.S., to establish the Florida First Business allocation pool and revised the state's private activity bond allocation. The Florida First Business allocation pool was created for use in providing allocations to businesses that are commencing projects which will lead to job creation or the retention of jobs in Florida. Businesses must be certified by the Office of Tourism, Trade, and Economic Development Enterprise Florida to be eligible to use this allocation pool. Section 159.804, F.S., was amended to revise the state's private activity bond volume limitation as follows:

- The first \$75 million (plus additional amounts based on the previous years' performance) allocated to the manufacturing facility bond pool;
- 50 percent to the regional allocation bond pool;

- 5 percent to the state priority allocation pool;
- 25 percent to the Florida Housing Finance Corporation; and,
- 20 percent to the Florida First Business allocation pool.

Section 159.809, F.S., relating to the recapture of unused allocations in private activity bond allocation pools, was amended to provide that on April 1 of each year, any unused portions remaining in the state allocation pool shall be added to the Florida First Business allocation pool, and to provide that on July 1 of each year, any unused portions remaining in the regional allocation pool or Florida Housing Finance allocation pool shall be added to the Florida First Business allocation pool. The section provides that on November 16 of each calendar year, any unused portions remaining in the Florida First Business allocation pool from January 1 through November 16 shall be added to the state allocation pool.

Section 159.805, F.S., provides procedures for obtaining allocations. Subsection (2) provides that any written confirmation issued by the director pursuant to subsection (1) ceases to be effective unless the bonds to which that confirmation applies have been issued by the agency and written notice of such issuance has been provided to the director within 90 calendar days after the date the confirmation was issued or December 29, whichever occurs first. Subsection (3) provides that upon the expiration of the confirmation or at any time the agency decides the allocation is no longer necessary, but, in any event, not later than the 95th calendar day after the date the confirmation was issued, the agency shall notify the division, by overnight common carrier delivery service, of its failure to issue any bonds pursuant to the written confirmation. Such notice of failure to issue shall be filed with the division and the allocation provided in the expired confirmation shall be made available for reallocation pursuant to this part.

Section 159.807, F.S., governs the state allocation pool, and provides that at all times the state allocation pool shall be available to provide allocations for those portions of a bond requiring an allocation under s.146(m) of the Code. The section provides that prior to April 1 of each year, the state allocation pool shall be available solely to provide written confirmations for private activity bonds to finance priority projects except manufacturing facilities. Priority projects are defined to mean: a solid waste disposal facility or a sewage facility, as such terms are defined in s. 142 of the Code, or any project which is to be located in an area which is an enterprise zone designated pursuant to s. 290.0065, F.S.

Section 159.8083, F.S., provides for allocations from Florida's First Business allocation pool to be awarded statewide pursuant to procedures specified in s. 159.805, F.S., with the exception of provisions requiring bonds to be issued within 90 days and a provision relating to excess demand in a pool. Florida First Business projects that are eligible for a carry forward do not lose their allocation on November 16 if they have applied and have been granted a carry forward. In issuing written confirmations of allocations for Florida First Business projects, the division must use the Florida First Business allocation pool. If allocation is not available from the Florida First Business allocation pool, the division must issue written confirmations of allocations for Florida First Business projects pursuant to s.159.806 (regional allocation pools) or s.159.807, (state allocation pool) F.S., in such order. For the purpose of determining priority within a regional allocation pool or the state allocation pool, notices of intent to issue bonds for Florida First Business

projects to be issued from a regional allocation pool or the state allocation pool are to be considered to have been received by the division at the time it is determined by the division that the Florida First Business allocation pool is unavailable. If the total amount requested in notices of intent to issue private activity bonds for Florida First Business projects exceeds the total amount of the Florida First Business allocation pool, the director must forward all timely notices of intent to issue, which are received by the division for such projects, to the Office of Tourism, Trade, and Economic Development, which must render a decision as to which notices of intent to issue are to receive written confirmations.

As the demand for private activity bond allocation has increased, the competition has become more intense every year. Under current law (s. 159.81, F.S.) certain projects may utilize a procedure that allows an issuer to request an allocation and then, rather than be forced either to use it during the calendar year or have it revert to another pool, carry that allocation forward for up to three years prior to issuing the bonds. Once a carry-forward is granted, however, it must be utilized by the entity for which it was obtained, preventing the state from shifting an earlier carry forward that is about to lapse to a viable project.

In at least three instances since the creation of the Florida First Business Pool, allocations for Florida First Business projects expired because the financing never went forward. The allocation represented by these projects, \$65,867,343 was lost to the state. In addition, for each year since 1996, there has been an unused balance that has reverted to the state pool. The following is a list of these reversions:

1996--\$43,363,329

1997--\$44,121,793

1998--\$41,835,292

1999--\$14,560

#### Low-Income Housing Property Tax Exemption

##### *The Charitable Property Tax Exemption*

Section 3(a), Art. VII of the State Constitution allows the Legislature to exempt from property taxation ". . . such portions of property as are used predominantly for educational, literary, scientific or charitable purposes."

Pursuant to chapter 196, F.S., property must meet the following criteria to qualify for a charitable property tax exemption:

The property must be owned and used by the exempt entity for charitable purposes (s. 196.192(2), F.S.) "Charitable purpose" is defined in s. 196.012(7), F.S., as

...a function or service which is of such a community service that its discontinuance could legally result in the allocation of public funds for the continuance of the function or service. It is not necessary that public funds be allocated for such function or service but only that any such allocation would be legal.

Subsection 196.195(5), F.S., specifies, in part, that no charitable exemption be granted "until the applicant has been found . . . to be nonprofit as defined by this section." While the entire section lists criteria to be considered when determining the nonprofit status of applicants, subsection (4) states, in part, the following:

(4) Notwithstanding the provisions of subsections (2) and (3), a corporation organized as nonprofit under chapter 617 which has a valid consumer certificate of exemption pursuant to s. 212.08(7)(o) and which has valid exemption from federal income tax under s. 501(c)(3) of the Internal Revenue Code is nonprofit.

The property must be exclusively or predominantly used for a charitable purpose (s. 196.192(2), F.S.). Predominant use of property is defined as "use of property for exempt purposes in excess of 50 percent" but less than exclusive, which is 100 percent (s.196.012(2) and (3), F.S.). The courts have clarified that unless the entire property is used at least predominantly for an exempt use, no portion of it qualifies for an exemption. *North Shore Medical Center, Inc. v. Bystrom*, 461 So.2d 167 (Fla. 3rd DCA 1984) After the property meets the predominant use test, the exemption is available only to those portions of property used for charitable purposes.

The property cannot be "used for profit making purposes." (s. 196.196(3), F.S.) This requirement is reinforced in s. 196.192, F.S., which stipulates that "each use to which the property is being put must be considered in granting an exemption from ad valorem taxation, including any economic use in addition to any physical use."

Because exemptions from taxation results in an uneven distribution of the tax burden, statutes granting such tax relief are strictly construed against the exemption. *Miami Battlecreek v. Lummus* 192 So. 211 (Fla. 1939) and *Sebring Airport Authority v. McIntyre*, 642 So.2d 1072 (Fla. 1994)

#### *Recent Court Decisions Affecting the Charitable Tax Exemption*

In the area of affordable housing, recent court decisions further guide property appraisers in determining properties qualified for the charitable tax exemption. The Fifth DCA upheld a lower court's decision granting a charitable tax exemption to Public Housing Assistance, Inc., reasoning that the discontinuance of such services "could legally result in the allocation of public funds to provide" low-income housing for indigent farm workers. Thus, the court found that these services fell within the statutory definition of charitable purpose. *Public Housing Assistance, Inc. v Havill*, 571 So.2d 45 (Fla. 5th DCA 1990).

On the other hand, a Fifth District Court upheld the denial by the Lake County Property Appraiser of a charitable property tax exemption for the Southlake Community Foundation Inc., a nonprofit owned affordable housing component of the Aurora development in Lake County. In *Southlake Community Foundation, Inc. v Havill*, 707 So.2d 361 (Fla. 5th DCA 1998), *rev. den.* 718 So.2d 170 (Fla. 1998), the court found that the "practical dominion" exercised by the for-profit developers over the Southlake Community Foundation, Inc., with the attendant economic benefits, "overwhelm any use of the property" by Southlake. The court reasoned that "the predominant use of Aurora was economic, not charitable," therefore rendering Southlake ineligible for the exemption. In addition, the court gave significance to the trial court finding that

the Southlake property was predominantly occupied by very low income persons or persons entitled to a section 8 subsidy and that the discontinuance of the rental units would not result in the allocation of public funds to provide similar housing. *Id.* At p. 364.

Because of the Southlake case, affordable housing advocates contend that this ruling financially undermined nonprofit properties which provide housing to low or very low income residents.

### *1999 Property Tax Exemption for Affordable Housing*

In response to the court's decision in *Southlake Community Foundation, Inc. v Havill*, the 1999 Legislature enacted chapter 99-378, L.O.F, creating s. 196.1978, F.S., to provide an exemption from ad valorem taxation for property that is used to provide affordable housing pursuant to any state housing program authorized under chapter 420, F.S., to low income or very low income persons as defined by s. 420.0004, F.S., that is owned entirely by a nonprofit corporation that meets the definition of a charitable organization under s. 501(c)(3) of the Internal Revenue Code of 1986, as amended, and that complies with the Internal Revenue Procedure 96-32, 1996-1 C.B. 717. The section provides that all property exempted must comply with the criteria for determination of exempt status to be applied by property appraisers on an annual basis in s. 196.195, F.S.

### *501(c)(3) Corporations*

Section 501(c)(3) of the Internal Revenue Code [26 USC Sec. 501] provides, in part, that the following organizations are exempt from federal taxes:

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes . . . no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

### *Internal Revenue Procedure 96-32*

Internal Revenue Procedure 96-32 provides guidelines for establishing "charitable" status for organizations that provide low-income housing. First, it sets a "safe harbor" under which such organizations will be deemed charitable because they relieve the poor and distressed. This threshold appears to be a relatively high standard for the provision of affordable housing to the poor. If the "safe harbor" threshold is missed, organizations may qualify as charitable if they meet other specified criteria. In addition, "housing organizations may rely on other charitable purposes to qualify for recognition of exemption from income tax as Code Sec. 501(c)(3) organizations." Such exempt purposes include, but are not limited to:

- ▶ Combating community deterioration;

- ▶ Lessening the burdens of government;
- ▶ Elimination of discrimination and prejudice;
- ▶ Lessening neighborhood tensions; and
- ▶ Relief of the distress of the elderly or physically handicapped.

It appears that a variety of non-profit groups providing a variety of services could comply with Internal Revenue Procedure 96-32 and maintain "charitable" status as an organization that provides low-income housing. However, Internal Revenue Procedure 96-32 stipulates the following:

If an organization furthers a charitable purpose . . . it nevertheless may fail to qualify for exemption because private interests of individuals with a financial stake in the project are furthered. For example, the role of a private developer or management company in the organization's activities must be carefully scrutinized to ensure the absence of inurement or impermissible private benefit resulting from real property sales, development fees, or management contracts.

*Definition of Moderate, Low, and Very-Low Income Persons*

Part 1 of chapter 420, F.S., is the State Housing Strategy Act. Section 420.004(9), F.S., defines low-income persons as:

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 the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

Section 420.004(10), F.S., defines moderate-income persons as:

one or more natural persons of a family, the total annual adjusted gross household income of which is less than 120 percent of the median annual adjusted gross income for households within the state, or 120 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

Section 420.004(14), F.S., defines very-low-income persons as:

one or more natural persons or a family, not including students, the total annual adjusted gross household income of which does not exceed 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 the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.



For purposes of affordable housing provided through local housing finance authorities, s. 159.603(7), F.S., defines "eligible persons" to mean:

one or more natural persons or a family, irrespective of race, creed, national origin, or sex, determined by the housing finance authority to be of low, moderate, or middle income. Such determination does not preclude any person or family earning up to 150 percent of the state or county median family income from participating in programs. Persons 65 years of age or older shall be defined as eligible persons regardless of their incomes. In determining the income standards of eligible persons for its various programs, the housing finance authority may consider the following factors:

- (a) Requirements mandated by federal law.
- (b) Variations in circumstances in different areas of the state.
- (c) Whether the determination is for rental housing or home ownership purposes.
- (d) The need for family-size adjustments to accomplish the purposes set forth in this act.

#### Florida Affordable Housing Guarantee Program (Guarantee Program)

The Guarantee Program was established by the 1992 Legislature as part of the Sadowski Act (Chapter 92-317, Laws of Florida). The program was created to fill the void of mortgage insurers for single-family and multifamily affordable housing projects and to stimulate secondary market activity for affordable housing transactions. The program may provide guarantees on both taxable and tax-exempt bond issues, and may be used with other corporation programs.

Section 420.5092, F.S., creates the Guarantee Program. This program establishes a Guarantee Fund intended to guarantee the payment of principal and interest on loans made to finance or refinance the purchase, construction, or rehabilitation of eligible housing. Eligible housing may include single family or multifamily housing. The section provides for a Guarantee Fund to be established with proceeds of revenue bonds issued by the corporation. The corporation is authorized to issue a maximum \$200 million in such revenue bonds. The Guarantee Fund was originally funded through the issuance of \$75 million in taxable revenue bonds in 1992, and subsequently expanded by means of an additional \$75 million in taxable revenue bonds issued in 1999. Such bonds are secured by a pledge of premium income from guarantees and interest earnings on the fund, with secondary security comprised of a debt service reserve fund in the amount of one year's debt service on the bonds. Any draw on the reserve fund is required to be replenished by a first priority claim on documentary stamp tax revenues received by the corporation. The corporation is permitted by the rating agencies to leverage the fund on a 5 to 1 basis. The corporation estimates current capacity of the fund at less than two years.

#### Predevelopment Loan Program

Section 420.526, F.S., creates the Predevelopment Loan Program to authorize the corporation to underwrite and make loans and grants for site acquisition and development of land on which housing will be constructed for rental or sale to very-low- and low-income residents. The fees of consultants, architects, engineers and surveyors, and other expenses incurred to develop land may also be reimbursed under this program. Local governments, housing authorities, nonprofit organizations, and other eligible sponsors are eligible to apply for loans and grants up to \$500,000

#### State Housing Initiatives Partnership Act

Part VII of chapter 420, F.S., (ss. 420.9072 -420.9079, F.S.), creates and governs the State Housing Initiatives Partnership (SHIP) program, which channels a portion of documentary stamp tax revenues created by the Sadowski Act to counties and entitlement cities in Florida. The program is intended to allow local governments to use SHIP funds to develop housing programs designed specifically for their communities. Counties and cities may use SHIP funds for emergency repairs, new construction, rehabilitation, down payment/closing costs, new construction impact fees, construction and gap financing, mortgage buy-downs, special needs housing, home ownership counseling, and property acquisition for housing to be produced within 12 months. SHIP funds also may be used to provide the required match for federal HOME Investment Partnership Program funds and other state and federal funds. The corporation uses independent contractors to provide technical assistance for counties and cities participating in SHIP.

Section 420.9071, F.S., provides definitions for terms used in the SHIP statutory sections. Subsection (4) defines "annual gross income" to mean:

annual income as defined under the Section 8 housing assistance payments programs in 24 C.F.R. part 5; annual income as reported under the census long form for the recent available decennial census; or adjusted gross income as defined for purposes of reporting under Internal Revenue Service Form 1040 for individual federal annual income tax purposes. Counties and eligible municipalities shall calculate income by projecting the prevailing annual rate of income for all adults in the household as the amount of income to be received in a household during the 12 months following the effective date of the determination.

Subsection (27) defines "sales price" or "value" to mean:

in the case of acquisition of an existing or newly constructed unit, the amount on the executed sales contract. For eligible persons who are building a unit on land that they own, the sales price is determined by an appraisal performed by a state-certified appraiser. The appraisal must include the value of the land and the improvements using the after-construction value of the property and must be dated within 12 months of the date construction is to commence. The sales price of any unit must include the value of the land in order to qualify as eligible housing as defined in subsection (8). In the case of rehabilitation or emergency repair of an existing unit, sales price or value means the value of the real property, as determined by an appraisal performed by a state-certified appraiser and dated within 12 months of the date construction is to commence or the assessed value of the real property as determined by the county property appraiser, plus the cost of the improvements.

Section 420.9075, F.S., governs local housing assistance plans and local partnerships. The section requires the staff or entity that has administrative authority for implementing a local housing assistance plan assisting rental developments shall annually monitor and determine tenant eligibility. This requirement is sometimes duplicative of monitoring activities conducted by another governmental entity as required by state or federal affordable housing programs. The section also provides that the sales price or value of new or existing eligible housing may not exceed 90 percent of the median area purchase price in the area where the eligible housing is located, as established by the United States Department of Treasury.

#### Affordable Housing Study Commission

The Affordable Housing Study Commission (commission), is a statutory body (s. 420.609, F.S.) whose duties include analyzing solutions and programs to address the state's acute need for housing for people with very low to moderate income, and making policy and funding recommendations to the Governor and the Legislature. The members of the commission are appointed by the Governor. By December 31 of each year, the commission is required to prepare and submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report detailing its findings and making specific program, legislative, and funding recommendations and any other recommendations it deems appropriate. The commission also is to recommend studies to be included in the annual research agenda of the Multidisciplinary Center for affordable housing. Such recommendations are to be submitted to the Department of Community Affairs and the center to assist them in establishing an appropriate research agenda for the center.

#### Zoning and Permitting of Affordable Housing

In its 1997 Final Report, the Florida Affordable Housing Commission examined the problems the "NIMBY" or Not-In-My-Back-Yard" syndrome created for the development of affordable housing. The report discussed the causes of NIMBYism, particularly effects on property values. The commission analysis revealed that ten out of twelve known studies determined that property values are not affected by various housing facilities. As regards the problems created for affordable housing development, the report concluded that NIMBYism presents a major barrier to the placement of affordable housing in communities where it is needed most -- close to employment opportunities and services. In short, the report found that NIMBYism is an impediment to fair housing. The report found that local governments have mixed responses to NIMBYism. Some officials make decisions to support affordable housing in the face of public opposition, while others react to opposition by denying or being slow to support such development.

To address the problem of NIMBYism, the commission considered several options. The Commission recommended an amendment to Florida's Fair Housing Act as the least onerous option. The option proposed amending the Fair Housing Act to prohibit discrimination in land use decisions and permitting of development based on race, color, national origin, sex, handicap, familial status, source of income, religion, or based on source of financing or a development or proposed development. The commission also recommended amending the Fair Housing Act to prohibit discrimination in housing based on source of income.

Chapter 760, F.S., relates to discrimination in the treatment of persons, and with minority representation. Part II of chapter 760, F.S., contains the provisions of the Florida Fair Housing Act (Act). The Act establishes the state's policy on fair housing; defines various terms; and prohibits discrimination based on race, color, national origin, sex, handicap, familial status, or religion in the sale or rental of housing, the provision of brokerage services, and the financing of housing or residential real estate transactions. The act does not address discrimination in land use decisions or permitting of development.

### Farmworker Housing

In its "1998 Final Report," the Affordable Housing Study Commission (commission) concluded three years of work devoted to developing a proposed Comprehensive Affordable Housing Policy for Florida. Despite having housing programs and a delivery system considered the best in the nation by many, the commission concluded that only a small part of the overall need for affordable housing is being met.

The commission recommended to the Governor and the Legislature that a complete policy be adopted to replace the current State Housing Strategy in s. 420.0003, F.S. In brief, the strategy proposed by the commission addresses the following areas: community revitalization, affordable housing providers, housing for households at 1 - 30 percent of area median income, housing for special needs households, preservation of existing affordable housing, obstacles to affordable housing, economic integration, and funding principles.

As noted, one issue the commission focused on was housing for special needs households, including migrant and seasonal farmworkers. The report found that Florida has long had a shortage of affordable housing to accommodate its growing migrant and seasonal farmworker populations. The commission found that many of the housing units currently available to farmworkers are substandard and lack easy access to essential services such as medical and shopping facilities and public transportation. In addition, the report noted migrant farmworkers are widely reported to be the victims of exploitive practices by landlords. While local housing authorities can provide housing for low-income farmworkers, the commission found that most do not. Similarly, while several state housing programs provide targeted funding for the development of farmworker housing, they either have not been used or in many cases have not been very successful in creating housing for this population.

The Department of Community Affairs, through a contract with the Shimberg Center at the University of Florida, has developed a methodology for quantifying the need for additional migrant housing by county. A comparison of housing demand with permitted migrant housing and other housing reserved for farm labor shows an unmet need for housing for an additional 82,302 persons. This estimate does not include the need for seasonal workers and their families since these were defined as year-round residents and were included in other needs assessments. Nearly 80 percent of the shortfall is concentrated in just six counties: Palm Beach, Hendry, Highlands, St. Lucie, Martin, and DeSoto.

In their proposal, "Florida Farmworker Housing Initiative," Governor Bush and Lieutenant Governor Brogan report that previous statewide studies have estimated Florida's total farmworker populations to range from 171,000 to 435,000, with 60-80 percent of those totals

thought to be migrant or seasonal. The proposal, which requested \$30 million in federal disaster funds to initiate a statewide network of affordable housing for migrant and seasonal farmworkers, declared that the unmet need for decent and affordable housing for migrant and seasonal farmworkers has met crisis proportions in Florida.

Advocates for farmworker housing and others familiar with the issue tend to agree that the key to providing affordable housing for Florida's farmworkers is to coordinate state efforts with the federal programs that provide funds to construct farmworker housing, and with other state affordable housing programs. Two federal programs are designed specifically to fund farmworker housing initiatives. These are the Section 514 and 516 programs that are administered by the Rural Housing Services (RHS) of the United States Department of Agriculture. Section 516 provides grants that may be used to cover up to 90 percent of the development cost of a project. Section 514 provides loans that are generally for a 33-year term at 1 percent interest and may be used to cover the full cost of a project. Currently, there are 25 Section 514/516 housing projects with a total of 3,739 units in 16 Florida Counties. Recently, the RHS has instituted a much more competitive application process that emphasizes the presence and extent of leveraged assistance, including donated land, funds for hard construction cost, tenant subsidies, and state and federal funds. To remain competitive, advocates believe Florida will need to commit state funds specifically to farmworker housing.

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

**Section 1--**Changes the allocation of the state volume limitation for private activity bonds issued under chapter 159, F.S., raising the allocation from 50 to 60% that portion of the allocation going to regional pools, and decreasing from 20 to 10% the percent available for use in the Florida First Business allocation pool.

**Section 2--**Lengthens the time period during which bonds must be issued and written notice of the issuance must be provided to the director of the Division of Bond Finance from 90 to 155 calendar days after the date the confirmation was issued or December 29, whichever occurs first. Changes the deadline whereby agencies which have received a confirmation must notify the Division of Bond Finance if they have failed to issue bonds from 95 days to 160 days. Clarifies that, upon issuance of bonds, the agency issuing the bonds must notify the division by telephone on the day of the issuance and send a written report to arrive no later than the next business day.

**Section 3--**Extends the time period for utilization of the state private activity pool and the Florida First Business Pool for priority projects from April 1 to June 1.

**Section 4--**Conforms the time periods for obtaining a written confirmation for the state allocation pool to the new June 1st date and provides that the notice of intent to issue must be filed with the division no later than May 1st, instead of the March 1st date of current law.

**Section 5--**Provides that on or after June 1 of each year, if allocation is not available from the Florida First Business allocation pool, the division issues certain written confirmations of allocations for Florida First Business projects in the priority order provided for the regional and state allocation pool.

**Section 6.** Amends s. 159.809, F.S., relating to the recapture of unused amounts, to delete subsection (1) which provides that on April 1 of each year, any portion of each initial allocation made pursuant to s. 159.804(4), F.S., (state allocation pool), for which confirmation has not been issued or for which an issuance report has not been received, shall be added the Florida First Business allocation pool. The section is further amended to conform dates with changes made in previous sections of the bill.

**Section 7.** Provides legislative intent that nothing in the section shall be construed so as to have the effect of altering the percentages until the categories of private activity bonds requiring an allocation of such volume limitation are restricted, altered or deleted under the Internal Revenue Code.

**Section 8.** Revises the current low-income housing property exemption to ensure that housing provided through local housing finance authorities is covered under the exemption. The bill revises the current low-income housing property exemption. The section is amended to provide that property used to provide affordable housing serving eligible persons as defined by s. 159.603(7), F.S., and persons having eligible incomes as defined by s. 420.004(9) and (14), F.S., which property is owned by entities meeting current requirements (property is owned by s. 501(c)(3) corporation qualified as charitable by the IRS and complies with Rev. Proc. 96-32, 1996-1 C.B. 717), shall be exempt from ad valorem taxation. The application of this section is retroactive to January 1, 2000.

**Section 9.** Provides specific authority to the Florida Housing Finance Corporation which matches the existing rule and practice of the corporation in permitting the reservation of future allocation or funding to provide a remedy for an applicant which appeals the status of its application, in order to avoid the cessation of all funding in the event of litigation. Grants specific authority for the designation by the board of the Florida Housing Finance Corporation of private activity allocations between single and multifamily housing.

**Section 10.** Amends s. 420.5092, F.S., regarding the Florida Affordable Housing Guarantee Program to increase the maximum total amount of revenue bonds which may be issued to fund the guarantee fund from \$200 to \$300 million. The guarantee fund was originally funded through the issuance of \$75 million in taxable revenue bonds in 1992, and subsequently expanded by means of an additional \$50 million in bonds issued in 1999. Such bonds are secured by a pledge of premium income from guarantees and interest earnings on the fund, with a secondary security comprised of a debt service reserve fund in the amount of one year's debt service on the bonds. Any draw on the reserve fund is required to be replenished by a first priority claim on documentary stamp tax revenues received by the corporation.

**Section 11.** Corrects a rule citation related to allocation of the low-income housing tax credits.

**Section 12.** Changes the Predevelopment Loan Program to allow the corporation to forgive certain loans and convert the loans to grants where the sponsor of the loan is unable to obtain construction or permanent financing for the development. However, the corporation may not forgive any portion of the loan that is secured by a mortgage to the extent the loan could be repaid from the sale of the mortgaged property. In addition, sponsors of farmworker housing

receive first priority under the program. Provides that the rate of interest of the loans can be set between 0 and 3 percent per year.

**Section 13.** Changes the date the Affordable Housing Commission submits its annual report from December 31st to July 15th of each year, beginning with the 2001 annual report. The commission must now submit the report to the executive director of the corporation in addition to the secretary of the Department of Community Affairs.

**Section 14.** Provides for the calculation of annual gross income under the SHIP program by annualizing verified sources of income instead of projecting the prevailing rate of income. Also modifies the definition of "sales price" under the SHIP program in the case of rehabilitations to take into account new living space created by such rehabilitation. Sales price is defined as the value of the real property, as determined by an appraisal dated within 12 months of the date construction is to begin or the assessed value of the real property as determined by the county property appraiser, plus the cost of the improvements.

**Section 15.** Allows entities implementing a local housing assistance plan assisting rental developments to rely on another governmental entity to annually monitor and determine tenant eligibility. Also modifies the existing purchase price limits under the SHIP program to permit an alternate determination from the Treasury's safe harbor amounts, based on actual statistical sales during the most recent 12-month period.

**Section 16.** Amends the Florida Fair Housing Act to prohibit discrimination in land use decisions or in the permitting of development based on the source of financing of a development or proposed development, in addition to race, color, national origin, sex, disability, familial status or religion.

**Section 17.** Establishes a State Farmworker Housing Pilot Loan Program. Under the program, the corporation shall make farmworker housing loans to a sponsor. In order to be eligible, a sponsor must agree to set aside at least 80% of the units for eligible farmworkers and 100% of the units must be set aside for households whose family incomes does not exceed 50% of the adjusted local median income in areas that are not metropolitan statistical areas, and 40% of adjusted local median income in metropolitan statistical areas. Rents must be limited to no more than 30% of the maximum household income. In addition, the sponsor must use federal funds provided under section 514 or section 516 of Title V of the Federal Housing Act of 1949.

Subsection (4) directs the corporation to establish a review committee and establish a scoring system for evaluation and competitive ranking of applications. The subsection provides that applications must address and be evaluated and ranked based on the following specified criteria. The subsection authorizes the corporation to reject any and all applications, and provides for the review committee to make recommendations to the Board of Directors of the corporation regarding program participation. The corporation board is to make the final ranking and the decisions regarding which applicants shall become program participants based on the scores received in the competitive ranking, further review of applications, and the recommendations of the review committee. The corporation board will approve or reject applications for loans and must determine the tentative loan amount available to each applicant selected for participation in the program.

Subsection (5) provides that loans provided pursuant to this section are to be non-amortizing. The corporation is directed to establish interest rates for loans. Loans to not-for-profit applicants must have interest rates of zero percent if no Low-income Housing Tax Credits are allocated to the development. If Low-income Housing tax credits are allocated to the development, the interest rate may be adjusted upward to meet appropriate federal requirements. Loans to for profit applicants must have interest rates of three percent if no Low-income Housing Tax Credits are allocated to the development. If Low-income Housing Tax Credits are allocated to the development, the interest rate may be adjusted upward to meet appropriate federal requirements. Loans may not exceed \$5 million. The subsection provides that no loan combined with any other mortgage in a superior position may exceed the development cost or the value of security, whichever is less. The loan term must be for a period of not less than 20 years. The corporation may renegotiate and extend the loan in order to extend the availability of housing for farmworkers. The term of a loan may not extend beyond the period for which the sponsor agrees to provide housing for farmworkers. Payment on the loans must be based on the actual development cash flow, and principal and interest may be deferred without constituting a default on the loan. The corporation may defer repayment of loans made under this section until the end of the loan period, including any extension, or until the housing no longer meets the requirements of section 1, whichever occurs first. The proceeds of all loans shall be used for new construction or substantial rehabilitation which creates affordable, safe, and sanitary housing units. The section requires sponsors to annually certify the eligibility status and adjusted gross income of all persons or families qualified under subsection (1), who are residing in a project funded by this program. For monitoring purposes, the corporation may rely on a federal governmental entity which is also required to monitor and determine tenant eligibility.

Paragraph (f) of subsection (5) provides that if agricultural and market conditions change substantially in a market area in which a project is located, the sponsor may request approval from the corporation for changes in the occupational or income set-aside requirements. The sponsor must submit evidence of such market changes, including but not limited to, a market study and statements from agricultural producers and agricultural labor representatives. The board of directors of the corporation may amend set-aside requirements; however, such changes must preserve the maximum percentage of units for eligible farmworkers as market conditions permit.

Subsection (6) provides procedures and powers of the corporation if a default on a loan occurs.

Subsection (7) directs the corporation, subject to the availability of funding, to contract with the Florida Farmworker Housing Corporation to assist the corporation in establishing and implementing the program, and to prepare a research report that includes a needs assessment and strategic plan for Florida's Agricultural labor housing. The research report must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Subsection (8) Provides that any balance of funds appropriated to the State Farmworker Housing Pilot Loan Program which are unencumbered at the end of the fiscal year shall be transferred to by the corporation to the Department of Children and Families to distribute to local coalitions for the homeless pursuant to s. 420.625, F.S.



**Section 18.** Subsection (10) of s. 220.02, F.S., is amended to delete a reference to the state housing tax credit.

**Section 19.** Section 220.13(1)(a), F.S., is amended to delete a reference to the state housing tax credit.

**Section 20.** Repeals the State Income Tax Housing Credit Program.

**Section 21.** Provides an effective date of July 1, 2000, except as otherwise provided in the act.

#### **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:**

Nonprofit corporations who develop and operate affordable housing properties meeting the criteria for the tax exemption defined in the bill, will not have to pay ad valorem taxes on such properties.

This bill creates a new affordable housing program, the State Farmworker Housing Pilot Loan Program. The bill also amends several existing affordable housing programs. New affordable housing resulting from these programs will benefit eligible households in finding affordable housing. To the extent these changes increase the effectiveness of such programs, developers and future residents will benefit.

Changes to the state's private activity bond allocation distribution will effect the availability of tax-exempt bonding authority for various eligible uses. The bill increases the availability of allocation for those purposes allowed under the regional allocation pools -- including affordable housing -- and decreases the availability of allocation for the Florida First Business allocation pool.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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