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**DATE:** May 8, 2001

**\*\*AS PASSED BY THE LEGISLATURE\*\***  
**CHAPTER #:** 2001-143, Laws of Florida

**HOUSE OF REPRESENTATIVES  
AS FURTHER REVISED BY THE COMMITTEE ON  
LOCAL GOVERNMENT & VETERANS AFFAIRS  
FINAL ANALYSIS**

**BILL #:** CS/HB 19, 1ST ENG

**RELATING TO:** Housing

**SPONSOR(S):** Committee on Local Government & Veterans Affairs and Representative Greenstein

**TIED BILL(S):** None

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

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS YEAS 9 NAYS 0
- (2) FISCAL POLICY & RESOURCES YEAS 11 NAYS 0
- (3) COUNCIL FOR SMARTER GOVERNMENT YEAS 9 NAYS 0
- (4)
- (5)

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I. SUMMARY:

This bill requires a facility or community claiming an exemption from the Fair Housing Act with respect to familial status for housing for older persons to register with the Florida Commission on Human Relations (Commission) and submit a letter to the Commission stating that it complies with the requirements for the exemption. The required registration and documentation must be renewed biennially. The information in the registry must be made available to the public, and the Commission must include this information on a website on the Internet. The bill authorizes the Commission to impose an administrative fine, not to exceed \$500, on a facility or community that knowingly submits false information. The bill also authorizes the Commission to establish a reasonable registration fee, not to exceed \$20, to recoup these expenses.

In addition, the bill amends statutes governing the Florida Affordable Housing Guarantee Program, to increase the program's bonding capacity from \$200 million to \$400 million and to add housing for the homeless to the types of affordable housing the Corporation may assist with the Guarantee Program. The bill also amends statutes governing the Florida Homeownership Assistance Program, to delete language limiting the Florida Housing Finance Corporation's ability to assist homebuyers with closing costs and down payment assistance to only those families who participate in the Corporation's single family mortgage revenue bond program. Finally, the bill adds housing developed under the multi-family and single family revenue bond programs to the list of housing that qualifies as housing for the elderly if it qualifies for an exemption under the Fair Housing Act as housing for older persons.

The new responsibilities the bill assigns to the Commission have an indeterminate impact on the Commission's expenditures and workload. The bill has no fiscal impact on local government. The Revenue Impact Conference considered the Fair Housing Provisions of CS/HB 19 on March 16, 2001. The Conference estimated that the passage of this bill would have a total, positive impact of about \$112,500 for fiscal year 2001-2002, and a recurring, positive, total impact of about \$115,900 plus growth.

SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |  |   |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

As discussed in the "Effects of Proposed Changes" section, this bill places additional requirements on facilities and communities claiming an exemption from the Fair Housing Act with respect to familial status for housing for older persons. The bill also places additional responsibilities on the Florida Commission on Human Relations and provides for a registration fee.

B. PRESENT SITUATION:

**Fair Housing Act**

Chapter 760, Florida Statutes, relates to discrimination in the treatment of persons to 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.

There are several exemptions to the Act, including a "housing for older persons" exemption. Section 760.29(4)(a), F.S., exempts "housing for older persons" from the Act's anti-discrimination provisions relating to familial status. Section 760.21(5), F.S., provides "familial status" is established when an individual who has not attained the age of 18 years is domiciled with:

- (a) A parent or other person having legal custody of such individual; or
- (b) A designee of a parent or other person having legal custody, with the written permission of such parent or other person.

Communities, owners, or operators of "housing for older persons" may lawfully exclude from residency families with children under 18 years of age. Section 760.29(4)(b), F.S., defines "housing for older persons" as:

- 1. Housing provided under any state or federal program that the Florida Commission on Human Relations determines is specifically designed and operated to assist elderly persons;
- 2. Housing intended for, and solely occupied by, persons 62 years of age or older; and

3. Housing intended and operated for occupancy by persons 55 years of age or older that meets the following requirements:
  - a. At least 80 percent of the occupied units are occupied by at least one person 55 years of age or older.
  - b. The housing facility or community publishes and adheres to policies and procedures that demonstrate the housing is intended and operated for occupancy by persons 55 years of age or older.
  - c. The housing facility or community complies with certain federal rules.

To correct a situation where certain housing facilities or communities originally intended for housing for older persons could not qualify for consideration as housing for older persons, Ch. 99-348, L.O.F., amended the Act to provide that housing facilities and communities must be deemed housing for older persons intended and operated for occupancy by persons 55 years of age and older if the housing facilities or communities:

- Meet the 80 percent occupancy requirement and the federal verification requirements of ss. 760.29(4)(b)3. a. and c., F.S.;
- Provide for an adult, senior, or retirement housing facility or community in their recorded governing document; and
- Maintain governing documents that either (a) lack an amendatory procedure, (b) prohibit amendments, or (c) restrict amendments until a specified future date.

This Act further provides that if such governing documents prohibit residents 16 years of age or younger, that provision must be construed to apply to residents 18 years of age or younger. Such construction is necessary to conform with federal requirements and for purposes of the Fair Housing Act. The Act requires housing facilities and communities to amend governing documents, which can be amended at a future date, within one year of such future date, and properly record such amendment. Also, the amendment must reflect the existing requirements for consideration as housing for older persons, if that housing facility or community intends to continue as housing for older persons.

Section 760.29(4)(d), F.S., provides that a person shall not be personally liable for monetary damages for a violation of this subsection if such person reasonably relied in good faith on the application of the exemption under this subsection relating to housing for older persons. For purposes of this paragraph, a person may show good faith reliance on the application of the exemption only by showing that:

1. The person has no actual knowledge that the facility or the community is ineligible, or will become ineligible, for such exemption; and
2. The facility or community has stated formally, in writing, that the facility or community complies with the requirements for such exemption.

Currently, no official list of facilities and communities claiming the exemption for housing for the elderly exists. Persons, such as realtors, wishing to avail themselves of the protection from monetary damages provided in s. 760.29(4)(d), F.S., must contact facilities and communities

individually to request a written statement that a facility or community complies with the requirements for an exemption.

### **Affordable Housing**

The Florida Housing Finance Corporation (FHFC) is the primary state agency responsible for stimulating the construction of affordable housing in Florida.

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

The Florida Affordable Housing Guarantee Program was established 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. (Chapter 92-317, Laws of Florida) 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 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 includes single family or multifamily housing. The fund is established with proceeds of revenue bonds, up to \$200 million, issued by the corporation. The Guarantee Fund was originally funded through the issuance of \$75 million in taxable revenue bonds in 1992, and was expanded by \$75 million 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. In April 2000, the corporation estimated the current capacity of the fund at less than two years.

#### Florida Homeownership Assistance Program

The HAP program (s. 420.5088, F.S.) provides homebuyers with access to funding for their home purchases. The Down Payment Assistance program offers zero percent interest, nonamortized, second mortgage loans to low-income families who are eligible to participate in the Corporation's single family mortgage revenue bond programs.

#### Single Family Mortgage Revenue Bond Program

This program uses the proceeds from both taxable and tax-exempt mortgage revenue bonds to finance below market interest rate mortgage loans for very low to moderate-income buyers. The program also offers credit counseling, down payment assistance, and deep subsidy second mortgages.

#### Multifamily Mortgage Revenue Bond Program

This program uses both taxable and tax-exempt bonds to provide below market rate loans to non-profit and for-profit developers of rental units who agree to set aside at least 20% of the apartment units for households earning at or below 50% of area median income (AMI) or 40% of units for households earning at or below 60% AMI. The FHFC receives a portion of the state's tax-exempt private activity bond allocation. This allocation is split between the single family and multifamily mortgage revenue bond programs.

### Housing for the Elderly

Section 420.503, F.S., provides definitions for terms used in part V of chapter 420, F.S., relating to the FHFC. Subsection (15) defines "elderly" to mean persons 62 years of age or older. As noted in the above discussion of the Fair Housing Act, housing intended and operated for occupancy by persons 55 years of age or older that meets specified requirements, qualifies as housing for the elderly under the act.

Subsection 19 defines "housing for the elderly." As part of the definition, the subsection declares that a project which qualifies for an exemption under the Fair Housing Act as housing for older persons as defined in s. 760.29(4), F.S., shall qualify as housing for the elderly for purposes of s. 420.5087(3)(c)2., F.S. (State Apartment Incentive Loan Program). In addition, the subsection provides that a project which qualifies for an exemption under the Fair Housing Act as housing for older persons shall qualify as a project targeted for the elderly under the Low-Income Housing Tax Credit Program (s. 420.5099, F.S.) and the HOME Investment Partnership Program (s. 420.5089, F.S.). The subsection does not address the Multifamily Mortgage Revenue Bond Program or the Single Family Mortgage Revenue Bond Program. As a result, housing for the elderly under these programs must meet the definition of elderly provided in subsection (15) of s. 420.503, F.S. -- 62 years of age or older.

#### C. EFFECT OF PROPOSED CHANGES:

##### **Fair Housing Act**

This bill provides for the creation of an official registry of facilities and communities claiming an exemption from the Fair Housing Act with respect to familial status for housing for older persons. To the extent facilities and communities comply with the registration and documentation requirements included in the bill, the bill will assist persons, such as realtors, wishing to avail themselves of the protection from monetary damages provided in s. 760.29(4)(d), F.S.

This bill requires a facility or community claiming an exemption from the Fair Housing Act with respect to familial status for housing for older persons to register with the Florida Commission on Human Relations (Commission) and submit a letter to the Commission stating that it complies with the requirements for the exemption. The required registration and documentation must be renewed biennially. The bill authorizes the Commission to establish a reasonable registration fee, not to exceed \$20, to defray the administrative costs associated with maintaining the registry. The information in the registry must be made available to the public, and the Commission must include this information on a website on the Internet. The bill authorizes the Commission to impose an administrative fine, not to exceed \$500, on a facility or community that knowingly submits false information.

The bill declares that the registration and documentation required by the bill shall not substitute for proof of compliance with the requirements of s. 760.29(4), F.S. The bill also declares that failure to comply with the registration and documentation requirements shall not disqualify a facility or community that otherwise qualifies for the exemption. The bill requires Commission rules to specify the fee and the forms and procedures to be used for the registration required by this bill.

##### **Affordable Housing**

In addition, the bill amends statutes governing the Florida Affordable Housing Guarantee Program, to increase the program's bonding capacity from \$200 million to \$400 million and to add housing for the homeless to the types of affordable housing the Corporation may assist with the Guarantee Program. The bill also amends statutes governing the Florida Homeownership Assistance

Program, to delete language limiting the Florida Housing Finance Corporation's ability to assist homebuyers with closing costs and down payment assistance to only those families who participate in the Corporation's single family mortgage revenue bond program. Finally, the bill adds housing developed under the multi-family and single family revenue bond programs to the list of housing that qualifies as housing for the elderly if it qualifies for an exemption under the Fair Housing Act as housing for older persons.

**D. SECTION-BY-SECTION ANALYSIS:**

**Section 1.** Paragraph (d) of subsection (2) of s. 420.5092, F.S., relating to the Florida Affordable Housing Guarantee Program, is amended to include housing for the homeless in the definition of "eligible housing." Subsection (11) is amended to increase the program's bonding capacity from \$200 million to \$400 million.

**Section 2.** Paragraph (a) of subsection (1) of s. 420.5088, F.S., relating to the Florida Homeownership Assistance Program, is amended to delete language limiting the Florida Housing Finance Corporation's ability to assist homebuyers with closing costs and down payment assistance to only those families who participate in the Corporation's single family mortgage revenue bond program. The subsection deletes current language providing that if the Corporation determines there is insufficient demand for such loans by persons or families eligible to participate in the single family mortgage revenue bond programs, it may make such loans to other persons or families who have incomes that do not exceed 80 percent of the state or local median income.

**Section 3.** Subsections (15) and (19) of s. 420.503, F.S., are amended. Subsection (15), which defines "elderly" to mean persons 62 years of age or older, is amended to state that this definition shall not be deemed to prohibit housing from being deemed housing for the elderly as defined by subsection (19) if such housing otherwise meets the requirements of subsection (19). Subsection (19) is amended to provide that a project which qualifies for an exemption under the Fair Housing Act as housing for older persons as defined in s. 760.29(4), F.S., shall qualify as housing for the elderly for purposes of loans made pursuant to s. 420.508, F.S., the Single and Multi Family Mortgage Revenue Bond Programs.

**Section 4.** Paragraph (e) is added to subsection (4) of s. 760.29, F.S., to require a facility or community claiming an exemption from the Fair Housing Act with respect to familial status for housing for older persons to register with the Florida Commission on Human Relations (Commission) and submit a letter to the Commission stating that it complies with the requirements of paragraph (b)1., 2., or 3. The paragraph requires the letter be submitted on the letterhead of the facility or community and be signed by the president of the facility or community. The required registration and documentation must be renewed biennially from the date of original filing. The information in the registry must be made available to the public, and the Commission must include this information on an Internet website. The paragraph authorizes the Commission to establish a reasonable registration fee, not to exceed \$20, that must be deposited into the Commission's trust fund to defray the administrative costs associated with maintaining the registry. The paragraph also authorizes the Commission to impose an administrative fine, not to exceed \$500, on a facility or community that knowingly submits false information. The paragraph declares that the registration and documentation required by the paragraph shall not substitute for proof of compliance with the requirements of s. 760.29(4), F.S. The bill also declares that failure to comply with the registration and documentation requirements shall not disqualify a facility or community that otherwise qualifies for the exemption provided in the subsection.

**Section 5.** Subsection (5) of section 760.31, F.S., relating to powers and duties of the Commission, is amended to require Commission rules to specify the fee and the forms and procedures to be used for the registration required in s. 760.29(4)(e), F.S.

**Section 6.** An effective date of October 1, 2001, is provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill authorizes the Commission to establish a reasonable registration fee, not to exceed \$20, that must be deposited into the Commission's trust fund to defray the administrative costs associated with maintaining the registry. The bill also authorizes the Commission to impose an administrative fine, not to exceed \$500, on a facility or community that knowingly submits false information.

The Revenue Impact Conference considered the Fair Housing Provisions of CS/HB 19 on March 16, 2001. The Conference estimated that the passage of this bill would have a total, positive impact of about \$112,500 for fiscal year 2001-2002, and a recurring, positive, total impact of about \$115,900 plus growth. General Revenue would receive 7 percent while the Department of Management Services' "Grants and Donations Trust Fund" (the fund servicing the Commission) would receive the remainder.

2. Expenditures:

This bill places additional responsibilities on the Florida Commission on Human Relations. The bill authorizes the Commission to assess a \$20 fee per application to cover costs and a \$500 fee to penalize false applications.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill has no direct impact on local government revenues.

2. Expenditures:

This bill has no direct impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires communities and facilities claiming an exemption from the Fair Housing Act with respect to familial status for housing for older persons to register and submit a letter to the Commission on a biennial basis in order to qualify for the housing for older persons exemption to the familial status provision of the Fair Housing Act. The bill also authorizes the Commission to establish a reasonable registration fee, not to exceed \$20, to defray the administrative costs associated with maintaining the registry.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of state tax shared with counties or municipalities.

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

The bill requires Commission rules to specify the fee and the forms and procedures to be used for the registration required in s. 760.29(4)(e), F.S.

C. OTHER COMMENTS:

N/A

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

**CS/HB 19, 1st ENG.**

On April 27, 2001, CS/HB 19 was read a second time and the three amendments, which are described below, were adopted. On April 30, the bill was read a third time and passed as amended by the House of Representatives. On May 4, 2001, the Senate passed CS/HB 19, 1st ENG.

**Council for Smarter Government**

On March 29, 2001, the Council for Smarter Government considered CS/HB 19, adopted three amendments, and passed the bill as amended. The amendments, which are traveling with the bill, are explained below.

Amendment #1

Subsection (15) of s. 420.503, F.S., which defines "elderly," is amended to provide that this definition shall not be deemed to prohibit housing from being deemed housing for the elderly as defined by subsection (19), if such housing otherwise meets the requirements of subsection (19). The amendment also amends subsection (19) to add housing developed under s. 420.508, F.S., the multi-family and single family revenue bond programs, to the list of housing that qualifies as housing for the elderly if it



qualifies for an exemption under the Fair Housing Act as housing for older persons as defined by s. 760.29(4), F.S.

Amendment #2

Section 420.5088, F.S., which governs the Florida Homeownership Assistance Program, is amended to delete language limiting the Florida Housing Finance Corporation's ability to assist homebuyers with closing costs and down payment assistance to only those families who participate in the Corporation's single family mortgage revenue bond program.

Amendment #3

Section 420.5092, F.S., which governs the Florida Affordable Housing Guarantee Program, is amended to increase the program's bonding capacity from \$200 million to \$400 million and to add housing for the homeless to the types of affordable housing the Corporation may assist with the Guarantee Program.

**Committee on Local Government & Veterans Affairs**

On February 6, 2001, the House Committee on Local Government & Veterans Affairs considered HB 19, adopted one amendment, and approved the bill as a committee substitute. The committee substitute differs from HB 19 as follows:

- The committee substitute does not make the registration and submission of documentation a condition for qualifying for the exemption from the Fair Housing Act with respect to familial status for housing for older persons, as does HB 19.
- The committee substitute requires a facility or community to submit a letter rather than an affidavit stating the facility or community complies with the requirements for the exemption.
- The committee substitute has an effective date of October 1, 2001. The filed bill has a delayed effective date to give facilities and communities time to comply without losing their exemption. This is not necessary under the committee substitute since failure to comply does not jeopardize qualification for the exemption.

VI. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

Thomas L. Hamby, Jr.

Staff Director:

Joan Highsmith-Smith

AS REVISED BY THE COMMITTEE ON FISCAL POLICY AND RESOURCES:

Prepared by:

Adam Shamy

Staff Director:

Greg Turbeville

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AS FURTHER REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

Prepared by:

Council Director:

Thomas L. Hamby, Jr.

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Don Rubottom

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**FINAL ANALYSIS PREPARED BY THE COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:**

Prepared by:

Council Director:

Thomas L. Hamby, Jr.

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Joan Highsmith-Smith

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