

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 131 Fair Housing Act  
**SPONSOR(S):** Carroll  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 442

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary		Jaroslav	Havlicak
2) Local Government & Veterans' Affairs			
3)			
4)			
5)			

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### SUMMARY ANALYSIS

Florida's Fair Housing Act ("FHA") currently prohibits discrimination on the grounds of race, color, national origin, sex, handicap, familial status, or religion in the sale or rental of housing. Current law does not prohibit such discrimination on the grounds of receipt of publicly-funded housing assistance.

This bill amends the FHA to define "source of income" as "receipt of any federal, state, or local assistance, including medical assistance or rent supplements," and to add "source of income" as a prohibited ground for discrimination in the sale or rental of housing.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |  |   |
|--------------------------------------|---|--|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 5. Empower families?                 | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |

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

This bill could be described as increasing the scope of government because it imposes additional restrictions on sellers or lessors of residential property.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Present Situation: Fair Housing Act**

Chapter 760, F.S., contains most of the state's prohibitions on discrimination. Part II of that chapter, ss. 760.20-760.37, F.S., is Florida's Fair Housing Act ("FHA"). The FHA establishes the state's policy on fair housing;<sup>1</sup> defines various terms;<sup>2</sup> and prohibits discrimination based on race, color, national origin, sex, handicap, familial status, or religion in the sale or rental of housing,<sup>3</sup> the provision of brokerage services,<sup>4</sup> the financing of housing or residential real estate transactions,<sup>5</sup> or in land use or development permitting.<sup>6</sup>

There are several exemptions to the FHA's general provisions, 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 760.22(5), F.S., defines that "familial status" as when an individual who has not attained the age of 18 years is domiciled with:

- a parent or other person having legal custody of such individual; or
- 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.<sup>7</sup>

<sup>1</sup> See s. 760.21, F.S. ("It is the policy of this state to provide, within constitutional limitations, for fair housing throughout the state.")

<sup>2</sup> See s. 760.22, F.S.

<sup>3</sup> See s. 760.23, F.S.

<sup>4</sup> See s. 760.24, F.S.

<sup>5</sup> See s. 760.25, F.S.

<sup>6</sup> See s. 760.26, F.S.

<sup>7</sup> 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; or
2. housing intended for, and solely occupied by, persons 62 years of age or older; or
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; and

Section 760.23, F.S., entitled “Discrimination in the sale or rental of housing and other prohibited practices” prohibits discrimination on the grounds of race, color, national origin, sex, handicap, familial status, or religion:

- by refusing to negotiate for sale or rental of a dwelling, refusing to sell or rent after the making of a bona fide offer, or otherwise making a dwelling unavailable on those grounds;<sup>8</sup> or
- by discriminating in terms, conditions or privileges of sale on rental, or the provision of services or facilities connected with sale or rental, based on such grounds;<sup>9</sup> or
- by indicating preferences or limitations in advertising based on such grounds;<sup>10</sup> or
- by representing that a dwelling is not available for inspection, sale or rental, when it is in fact available, based on such grounds;<sup>11</sup> or
- by inducing or attempting to induce the sale or rental of a dwelling by representations regarding the entry or potential into the neighborhood of a person or persons categorized on such grounds.<sup>12</sup>

### **Present Situation: State Housing Assistance**

The Florida Housing Finance Corporation (“FHFC”) is the primary public entity responsible for stimulating the construction of affordable housing in Florida.

#### Florida Affordable Housing Guarantee Program

The Florida Affordable Housing Guarantee Program (“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.<sup>13</sup> The Guarantee Program may provide guarantees on both taxable and tax-exempt bond issues, and may be used with other FHFC programs. Pursuant to s. 420.5092, F.S., the Guarantee Program guarantees 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 FHFC. The Guarantee Fund was originally funded through the issuance of \$75 million in taxable revenue bonds in 1992, and was expanded by an additional \$325 million in subsequent years. 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 FHFC. The FHFC is permitted by the rating agencies to leverage the fund on a five-to-one basis, allowing the Guarantee Program to issue nearly \$2 billion in loan guarantees since its inception.<sup>14</sup>

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- 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; and  
c. the housing facility or community complies with certain federal rules.

<sup>8</sup> See s. 760.23(1), F.S.

<sup>9</sup> See s. 760.23(2), F.S.

<sup>10</sup> See s. 760.23(3), F.S.

<sup>11</sup> See s. 760.23(4), F.S.

<sup>12</sup> See s. 760.23(5), F.S.

<sup>13</sup> See ch. 92-317, L.O.F.

<sup>14</sup> See Florida Housing Finance Corporation, 2002 Annual Report, 28-29.

## Florida Homeownership Assistance Program

The Homeownership Assistance Program (“HAP”) program, established in s. 420.5088, F.S., provides homebuyers with access to funding for their home purchases. Although authorized to impose interest rates of up to 3%,<sup>15</sup> the down payment assistance portion of HAP currently offers zero percent interest, non-amortized second mortgage loans to low-income families who are eligible to participate in the FHFC’s single family mortgage revenue bond programs.<sup>16</sup>

## 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.<sup>17</sup> 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.<sup>18</sup> 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 FHA, 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.

Under s. 420.503(19), a project which qualifies for an exemption under the FHA as housing for older persons qualifies as housing for the elderly for purposes of s. 420.5087, F.S. (“SAIL,” the State Apartment Incentive Loan Program) and as a project targeted for the elderly under the Low-Income Housing Tax Credit Program<sup>19</sup> and the HOME Investment Partnership Program.<sup>20</sup> 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 s. 420.503(15), F.S.—62 years of age or older.

## **Present Situation: Federal Housing Assistance**

As part of a major restructuring of federal rental assistance for low-income families in 1974, Congress created project-based assistance that supported new construction and rehabilitation, and tenant-based assistance.<sup>21</sup> Tenant-based assistance is provided in the form of vouchers, intended to help low-income people obtain housing in the open market. A prospective tenant finds housing in which they’d like to live, and once the landlord enters into a contract with the local administering public housing

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<sup>15</sup> See s. 420.5088, F.S.;

<sup>16</sup> See Florida Housing Finance Corporation, “Housing Programs,” available online at [http://www.floridahousing.org/webdocs/newsroom/corpinfo/Housing\\_Programs.pdf](http://www.floridahousing.org/webdocs/newsroom/corpinfo/Housing_Programs.pdf)

<sup>17</sup> See ch. 67-25, Fla. Admin. Code.

<sup>18</sup> See r. 67-21.004, Fla. Admin. Code.

<sup>19</sup> See s. 420.5099, F.S.

<sup>20</sup> See s. 420.5089, F.S.

<sup>21</sup> See Pub. L. 93-383, 88 Stat. 633 (“Housing and Community Development Act of 1974”).

authority or other voucher administrator, the landlord is paid the monthly difference between 30% of the tenant's income and the fair market rent for the unit.<sup>22</sup> According to the FHFC, federal funding to Florida in 2003 for this program was just under \$5.3 billion, supporting 80,000-85,000 vouchers.<sup>23</sup>

### Proposed Changes

This bill amends the definitional section of the FHA, s. 760.22, F.S., to provide a definition of "source of income" as "receipt of any federal, state, or local assistance, including medical assistance or rent supplements."

This bill amends s. 760.23, F.S., the section of the FHA prohibiting discrimination on grounds of race, color, national origin, sex, handicap, familial status, or religion in the sale or rental of housing, to add "source of income" as a prohibited ground for discrimination in the sale or rental of housing.

#### C. SECTION DIRECTORY:

**Section 1.** Amends s. 760.22, F.S., to define "source of income."

**Section 2.** Amends s. 760.23, F.S., to prohibit discrimination in the sale or rental of housing, and other specified prohibited practices, on the basis of source of income.

**Section 3.** Provides an effective date of upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

#### D. FISCAL COMMENTS:

None.

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<sup>22</sup> See 42 U.S.C. §§ 1437f and 13611 *et seq.*; 24 C.F.R. Part 982.

<sup>23</sup> E-mail from Nancy Muller, Policy Director, Florida Housing Finance Corporation, February 12, 2004.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

This bill would not prevent discrimination against anyone whose only financial assistance is private, such as from family or from a non-profit charitable organization.

This bill does not add "source of income" as a prohibited ground for discrimination to any section of the FHA other than that with respect to the sale or rental of housing.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

N/A