

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 933 Affordable Housing
SPONSOR(S): Community & Military Affairs Subcommittee; Rouson
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1182

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	13 Y, 1 N, As CS	Duncan	Hoagland
2) Finance & Tax Committee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

Public Housing

Florida law provides for the creation of city, county and regional housing authorities. The bill grants housing authorities the power to develop, acquire, lease, construct, rehabilitate, manage, or operate commercial projects that allow access to essential goods and services for persons of low income residing in such residential projects. Any revenue received by a housing authority from commercial projects that provide access to essential goods and services necessary for daily living of persons residing in housing projects must be used exclusively to upgrade and improve living conditions in the housing project or to preserve and rehabilitate public or affordable housing managed by the housing authority.

The bill expands the current housing authority exemption from property and debentures taxation to include all property used to provide access to essential goods and services necessary for daily living for persons residing in housing projects. In addition, the bill declares that facilities made available by housing authorities to provide access to essential goods and services necessary for daily living for persons residing in housing projects are a critical component of those housing projects and constitute a public use and a governmental function.

The current housing authority exemption from all taxes and special assessments of the state or any city, town, county, or political subdivision of the state is expanded to include all commercial projects that allow access to essential goods and services for persons of low income residing in housing projects.

Florida Housing Finance Corporation

The bill authorizes the FHFC to utilize up to 10 percent of its annual allocation of low-income housing tax credits, nontaxable revenue bonds, and State Apartment Incentive Loan (SAIL) Program funds appropriated by the Legislature and allocated by requests for proposals or other competitive solicitation for high priority affordable housing projects. Such projects include housing to support economic development and job creation initiatives, housing for veterans and their families, and housing for other special needs populations.

The provisions of the bill relating to public housing appear to have a negative fiscal impact on state and local government revenue. The Revenue Estimating Conference has not determined the fiscal impact to the state or local government as a result of this bill.

The bill provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Federal Government and Public Housing

Overview

Public housing was established to provide decent and safe rental housing for eligible low-income families, the elderly, and persons with disabilities. Public housing comes in the form of scattered single-family housing and multifamily housing. The U.S. Department of Housing and Urban Development (HUD) administers federal aid to local housing agencies that manage the housing for low-income residents at rents they can afford. HUD furnishes technical and professional assistance in planning, developing and managing these developments.¹ HUD administers various public housing programs including the following:²

- **Capital Fund**
The Capital Fund provides funds to housing authorities to modernize public housing developments.
- **Demolition/Disposition**
The Demo/Dispo program was created in an effort to help eliminate old, run down public housing.
- **Homeownership**
A Public Housing Authority (PHA) may sell all, or a portion of, a public housing development to eligible residents or resident organizations, for purposes of homeownership. The PHA is required to submit a Homeownership Plan that has been approved by HUD.
- **HOPE VI**
Used to revitalize the country's most distressed public housing developments by providing grants and flexibility to address the housing and social service needs of residents.
- **Housing Choice Vouchers (Formerly Section 8)**
Allow very low-income families to choose and lease or purchase safe, decent, and affordable privately-owned rental housing.
- **Moving to Work Demonstration (MTW)**
MTW is a demonstration program that allows housing authorities to design and test ways to give incentives to families to become economically self-sufficient, achieve programmatic efficiencies, reduce costs, and increase housing choice for low-income households.
- **Operating Fund**
The Public Housing Operating Fund provides operating subsidies to housing authorities to assist in funding the operating and maintenance expenses of their dwellings. The subsidies are required to help maintain services and provide minimum operating reserves.
- **Resident Opportunities and Self Sufficiency (ROSS) and Neighborhood Networks (NN)**
The ROSS program links services to public housing residents by providing grants for supportive services, resident empowerment activities and activities to assist residents in becoming economically self-sufficient.

¹ U.S. Department of Housing and Urban Development, *HUD's Public Housing Program*, available at http://portal.hud.gov/hudportal/HUD?src=/topics/rental_assistance/phprog (last visited February 5, 2012).

² U.S. Department of Housing and Urban Development, *Public Housing Programs*, available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/programs (last visited February 5, 2012).

Rental Assistance Demonstration

In November 2011, Congress authorized the Rental Assistance Demonstration (RAD) to develop new tools to help preserve public and assisted rental housing. According to HUD:³

One of the main objectives of RAD is to address the large backlog of capital needs that has accumulated over the years in public housing, estimated at \$26 billion or about \$23,365 per unit. The Capital Fund program provides the primary source of funding for repairs and renovations in public housing, but current funding levels only reach a small percentage of that backlog. Largely due to this chronic funding shortfall, over 150,000 Public Housing units have been lost to demolition or disposition over the past 15 years, and the inventory continues to lose thousands more units every year as properties continue to deteriorate. Regrettably, the structure of the Public Housing program makes it extremely difficult for PHAs to access private debt and equity. One of the main reasons behind converting public housing to long-term Section 8 rental assistance is to allow PHAs to finance their long-term capital needs, something which is common practice in every other affordable housing program.

Under RAD, PHAs and owners of Mod Rehab properties will have the option of converting their current form of rental assistance for 60,000 units to either a:

- Project-Based Voucher (PBV) Contract, which PHAs administer locally. The Department will offer administrative flexibility and waive certain current rules to make the PBV option a more viable financing tool; or
- Project-Based Rental Assistance (PBRA) Contract, administered by the Department's Office of Multifamily Housing Programs. Congress has authorized a PBRA option for PH and Mod Rehab properties that is eligible for renewal under the Multifamily Assisted Housing Reform and Affordability Act (MAHRAA).

Assessment of Public Housing Agencies (Authorities)

The purpose of the Public Housing Assessment System is to improve the delivery of services in public housing and enhance trust in the public housing system among public housing agencies (PHAs) and residents, HUD, and the general public by providing a management tool for effectively and fairly measuring the performance of a PHA in essential housing operations, including rewards for high performers and consequences for poor performers. The Real Estate Assessment Center (REAC) is responsible for assessing and scoring the performance of PHAs.⁴

The REAC conducts an assessment of and scores PHAs based on four indicators:⁵

- Indicator #1 – The physical condition of a PHA's properties.
- Indicator #2 – The financial condition of a PHA.
- Indicator #3 – The management operations of a PHA.
- Indicator #4 – The resident service and satisfaction feedback on a PHA's operations.

A PHA will receive a status designation corresponding to its final score as follows:⁶

- High Performer
- Standard Performer
- Troubled Performer

³ HUD Public Housing Management E-Newsletter, January 2012, Vol. 3, Issue1, available at <http://portal.hud.gov/huddoc/phm-jan2012.pdf> (last available February 5, 2012).

⁴ 24 C.F.R. s. 902.1, Chapter IX – Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development, *Public Housing Assessment System – General Provisions*, available at <http://www.hud.gov/offices/pih/regs/fedreg.cfm> (last visited February 5, 2012).

⁵ *Id.*

⁶ *Id.* at s. 902.67

State Government and Public Housing

Florida law provides that the role of state government in housing and urban development required by part I of ch. 421, F.S., (Housing Authorities Law), ch. 422, F.S., (Housing Cooperation Law), and ch. 423, F.S., (Tax Exemption of Housing Authorities) is the responsibility of the Department of Economic Opportunity.⁷ Florida law includes a finding that there is a shortage of safe or sanitary dwelling accommodations available at rents which persons of low income can afford. Providing such accommodations, including the acquisition by a housing authority of property to be used for or in connection with housing projects, are deemed exclusively public uses and purposes for which public money may be spent and private properties acquired and are governmental functions of public concern.⁸ The Department of Economic Opportunity does not monitor, evaluate, or have oversight of housing authorities to ensure that housing authorities are in compliance with federal law.

Local and Regional Housing Authorities

Florida law authorizes the creation of city, county and regional housing authorities.⁹ Of the 110 housing authorities in Florida,¹⁰ 93 are special districts.¹¹ A city's governing body may by resolution make a determination that there is a need for a housing authority. The determination of the need for a city housing authority may be initiated by the city's governing body or upon the filing of a petition signed by 25 city residents requesting the governing body to make such determination.¹² The mayor, with the approval of the governing body, appoints no fewer than five and no more than seven persons as commissioners of the authority.¹³ The powers of each housing authority are vested in the commissioners and action may be taken upon a majority vote of the commissioners.¹⁴

The creation and powers of county housing authorities is similar to the creation of city housing authorities. However, in counties, petitions must be signed by 25 county residents and the Governor appoints the commissioners.¹⁵ A county housing authority's area of operation includes all of the county except that portion which lies within the territorial boundaries of any city as defined in the Housing Authorities Law. A regional housing authority may be created by two or more contiguous counties if a regional entity would be a more economically or administratively efficient unit. In the case of regional housing authorities, the Governor also appoints the commissioners.¹⁶ The powers of a regional housing authority are analogous to those of a city or county housing authority.

No commissioner or employee of an authority may acquire any interest in any housing project or in any property included or planned to be included in any project, nor in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project. If a commissioner or employee of a housing authority owns or controls an interest, direct or indirect, in any property included or planned to be included in any housing project, he or she must immediately disclose such interest in writing to the authority. Failure to disclose such interest constitutes misconduct in office.¹⁷

Housing authorities have the power to:¹⁸

- Sue and be sued.
- Acquire, lease, and operate housing projects.

⁷ Section 421.001, F.S.

⁸ Section 421.02, F.S.

⁹ See ss. 421.04, 421.27, and 421.28, F.S.

¹⁰ U.S. Department of Housing and Urban Development, Public & Indian Housing, Florida, *available at* <http://www.hud.gov/offices/pih/pha/contacts/states/fl.cfm> (last visited February 2, 2012).

¹¹ Department of Economic Opportunity, Division of Community Development, Special District Information Program, *available at*, <http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/report.cfm> (last visited February 2, 2012).

¹² Section 421.04, F.S.

¹³ Section 421.05, F.S.

¹⁴ *Id.*

¹⁵ Section 421.27, F.S.

¹⁶ See s. 421.28, F.S.

¹⁷ Section 421.06, F.S.

¹⁸ Section 421.08, F.S.

- Provide for the construction, reconstruction, improvement, alteration, or repair of any housing project.
- Lease or rent any dwellings, houses, accommodations, lands, buildings, structures, or facilities embraced in any housing project.
- Own, hold, and improve real or personal property.
- Acquire by the exercise of the power of eminent domain any real property.
- Invest any funds held in reserves or sinking funds.
- Organize for the purpose of creating a for-profit or not-for-profit corporation, limited liability company, or other similar business entity pursuant to all applicable laws of the state in which the housing authority may hold an ownership interest or participate in its governance in order to develop, acquire, lease, construct, rehabilitate, manage, or operate multifamily or single-family residential projects. These projects may include nonresidential uses and may use public and private funds to serve individuals or families who meet the applicable income requirements of the state or federal program involved.

A housing authority has the right to acquire by the exercise of the power of eminent domain any real property which it may deem necessary for its purposes. Property already devoted to a public use may be acquired in like manner, provided that no real property belonging to the city, the county, the state or any political subdivision may be acquired without its consent.¹⁹

A housing authority is authorized to borrow money or accept grants or other financial assistance from the Federal Government for or in aid of any housing projects within its area of operation. A housing authority is also empowered to take over or lease or manage any housing project or undertaking constructed or owned by the Federal Government. In addition, an authority is authorized “to do any and all things necessary or desirable to secure the financial aid or cooperation of the Federal Government in the undertaking, construction, maintenance or operation of any housing project by such authority.”²⁰

Florida’s Public Housing Units

In 2006, the Affordable Housing Study Commission issued a Report: A Preservation Strategy for Florida’s Affordable Multifamily Housing. The Commission stated:²¹

Originally, the federal government was committed to paying acquisition, construction, and capital costs, while PHAs were expected to pay operating costs from their residents’ rental payments.

Federal operating subsidies were formally established in 1970 to make up the difference between PHA rental income and operating expenses. As of early 2005, there were 38,827 public housing units in Florida. The majority of these units, 69 percent, are over 30 years old, and only 5 percent are under 20 years old.

From a preservation perspective, the threat to public housing is the ongoing deterioration of an aging stock. Additionally, the physical condition of public housing properties is crucial to the ability of PHAs to rent the units and generate revenue. The capital needs of public housing have been chronically under-funded for much of the program’s history, and the mechanisms to address maintenance and rehabilitation can be unwieldy. Early in the program’s history, too little funding was provided to keep maintenance problems in check and today these long deferred maintenance issues continue to worsen.

Recent Funding

In June 2010, HUD awarded \$64.8 million from the Capital Fund Program to Florida’s public housing authorities to make capital improvements to their public housing units.²²

¹⁹ Section 421.12, F.S. See chapters 73 and ch. 74, F.S.

²⁰ Section 421.21, F.S.

²¹ The Affordable Housing Study Commission, *A Preservation Strategy for Florida’s Affordable Multifamily Housing, Final Report 2006*, at 8, available at <http://apps.floridahousing.org/StandAlone/AHSC/AHSC-AnnualReports.htm> (last visited February 5, 2012).

On July 12, 2011, HUD announced the award of \$55,885,727 from the Capital Fund Program to 81 public housing authorities in Florida.

Housing Cooperation Law

Florida law provides that any state public body, for the purpose of aiding and cooperating in the construction or operation of housing projects may:²³

- Dedicate, sell or lease any of its property to a housing authority or the Federal Government.
- Cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities or any other works, which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with housing projects.
- Furnish, close, pave, install, grade, or plan streets, roads, alleys, or sidewalks.
- Do any and all things, necessary or convenient to aid and cooperate in the planning, undertaking, construction or operation of housing projects.
- Purchase or legally invest in any of the debentures of a housing authority.

Tax Exemption of Housing Authorities

Florida law provides property tax exemptions as well as state and local government tax and assessment exemptions for housing authorities. The law states:

“Such housing projects, including all property of a housing authority used for or in connection therewith or appurtenant thereto, are exclusively for public uses and municipal purposes and not for profit, and are governmental functions of state concern. As a matter of legislative determination, it is found and declared that the property and debentures of a housing authority are of such character as may be exempt from taxation.”²⁴

In addition, the law states:

“The housing projects, including all property of housing authorities used for or in connection therewith or appurtenant thereto, of housing authorities shall be exempt from all taxes and special assessments of the state or any city, town, county, or political subdivision of the state, provided, however, that in lieu of such taxes or special assessments a housing authority may agree to make payments to any city, town, county or political subdivision of the state for services, improvements or facilities furnished by such city, town, county or political subdivision for the benefit of a housing project owned by the housing authority, but in no event shall such payments exceed the estimated cost to such city, town, county or political subdivision of the services, improvements or facilities to be so furnished.”²⁵

Florida Housing Finance Corporation

The Florida Housing Finance Corporation (FHFC)²⁶ is the state entity primarily responsible for encouraging the investment of private capital in residential housing and stimulating the construction and rehabilitation of affordable housing in Florida.²⁷ The FHFC administers a number of multifamily

²² Florida Sun, *HUD Awards \$65 Million to Public Housing Authorities in Florida To Improve, Preserve Public Housing Across the State*, June 24-30, 2010, vol.79, No. 25, at 2, available at <http://www.bluetoad.com/publication/?i=41160&p=2> (last visited February 5, 2012).

²³ Section 422.04, F.S.

²⁴ Section 423.01(4), F.S.

²⁵ Section 423.02, F.S.

²⁶ The Florida Housing Finance Corporation (FHFC) is a public corporation within the Department of Economic Opportunity (DEO). However, the FHFC is a separate budget entity and is not subject to the control, supervision, or direction of DEO. Section 420.504, F.S.

²⁷ Section 420.502(7), F.S.

and single family housing programs that help local governments assist Floridians in obtaining safe, decent affordable housing.

- The rental housing programs include the Multifamily Mortgage Revenue Bond, Low Income Housing Tax Credits, State Apartment Incentive Loan (SAIL), Elderly Housing Community Loan, Florida Affordable Housing Guarantee and Home Investment Partnerships programs.
- Homeownership programs include the First Time Homebuyer Program, the Homeownership Loan Program and down payment assistance programs such as the Homeownership Assistance Program, HOME Down Payment Assistance, Homeownership Assistance for Moderate Income, and Three Percent Cash Assistance. In addition, the FHFC offers the Mortgage Credit Certificate program; and several Special Programs including the Predevelopment Loan Program, Demonstration Loans and the Affordable Housing Catalyst Program. Also, the FHFC allocates documentary stamp funds to local governments through the State Housing Initiatives Partnership Program (SHIP). The majority of SHIP funds are directed by statute toward home ownership activities.
- Federal housing programs, especially those administered by Housing and Urban Development, typically serve those with the lowest incomes.

Florida law grants the FHFC with specific powers necessary or convenient to carry out and effectuate the purposes for providing affordable housing.²⁸

EFFECT OF PROPOSED CHANGES

Public Housing

The bill provides that an important state interest is served by providing access to essential commercial goods and services necessary for daily living for persons served by housing authorities as those persons often have limited transportation capacity and significant family demands. Limited transportation capacity and significant family demands complicate daily living and make access to essential commercial goods and services difficult.

Housing authorities are granted the power to develop, acquire, lease, construct, rehabilitate, manage, or operate commercial projects that allow access to essential goods and services for persons of low income residing in such residential projects. The bill does not provide specific oversight or monitoring for the commercial development and this additional power would be granted to housing authorities designated as a high performers, standard performers, or troubled performers. It is not clear as to whether HUD would be responsible for monitoring and evaluating commercial projects and how housing authorities will generate the funds necessary to carry out this additional power.

The bill provides that the powers of housing authorities to carry out eminent domain would not extend to real property to be used to provide access to essential commercial goods and services. In addition, any revenue received by a housing authority from commercial projects that provide access to essential goods and services necessary for daily living of persons residing in housing projects must be used exclusively to upgrade and improve living conditions in the housing project or to preserve and rehabilitate public or affordable housing managed by the housing authority.

The term “essential goods and services” is defined to mean goods, such as groceries and clothing, and services, such as child care, K-12 education, financial services, job training and placement, and laundry facilities that are necessary for daily living and that may be difficult for persons of low income to access unless collocated with the housing project where they live and substantially serving persons of low income. The term “housing project” is amended to include any work or undertaking to provide access to essential goods and services. The definitions of other terms are amended to replace or remove outdated language.

The provision under the Housing Cooperation Law addressing the state’s cooperation in undertaking housing projects is amended to include commercial projects that allow access to essential goods and services for persons of low income residing in housing projects among the allowable projects.

²⁸ Sections 159.608 and 420.507, F.S.

The bill expands the current housing authority exemption from property and debentures taxation to include all property used to provide access to essential goods and services necessary for daily living for persons residing in housing projects. In addition, the bill declares that facilities made available by housing authorities to provide access to essential goods and services necessary for daily living for persons residing in housing projects are a critical component of those housing projects and constitute a public use and a governmental function.

The current housing authority exemption from all taxes and special assessments of the state or any city, town, county, or political subdivision of the state is expanded to include all commercial projects that allow access to essential goods and services for persons of low income residing in housing projects.

The exemptions from all taxes, including property taxes, and special assessments would impact the ability of the state and local government to generate revenue.

The bill also amends several current statutory provisions to correct cross-references and replace or remove outdated language and terms relating to public housing.

Florida Housing Finance Corporation

The bill authorizes the FHFC to utilize up to 10 percent of its annual allocation of low-income housing tax credits, nontaxable revenue bonds, and State Apartment Incentive Loan (SAIL) Program funds appropriated by the Legislature and allocated by requests for proposals or other competitive solicitation for high priority affordable housing projects. Such projects include housing to support economic development and job creation initiatives, housing for veterans and their families, and housing for other special needs populations.

B. SECTION DIRECTORY:

Section 1: Amends s. 420.507, F.S., relating to the powers of the Florida Housing Finance Corporation.

Section 2: Amends s. 421.02, F.S., relating findings and declaration of necessity.

Section 3: Amends s. 421.03, F.S., relating to definitions.

Section 4: Amends s. 421.08, F.S., relating to powers of housing authorities.

Section 5: Amends s. 421.09, F.S., relating to operation not-for-profit.

Section 6: Reenacts and amends s. 421.21, F.S., relating to aid from Federal Government; tax exemptions.

Section 7: Amends s. 421.32, F.S., relating to rural housing projects.

Section 8: Amends s. 422.02, F.S., relating to finding and declaration of necessity.

Section 9: Amends s. 422.04, F.S., relating to cooperation in undertaking housing projects.

Section 10: Amends s. 423.01, F.S., relating to finding and declaration of property tax exemption for housing authorities.

Section 11: Amends s. 423.02, F.S., relating to housing projects exempted from taxes and assessments; and payments in lieu of.

Section 12: Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill expands the current housing authority exemption from all taxes and special assessments of the state or any city, town, county, or political subdivision of the state to include all commercial projects that allow access to essential goods and services for persons of low income residing in housing projects.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill expands the current housing authority exemption from property and debentures taxation to include all property used to provide access to essential goods and services necessary for daily living for persons residing in housing projects and all commercial projects that allow access to essential goods and services for persons of low income residing in housing projects. These tax exemptions would reduce the ability for local governments to raise revenue.

The bill expands the current housing authority exemption from all taxes and special assessments of the state or any city, town, county, or political subdivision of the state to include all commercial projects that allow access to essential goods and services for persons of low income residing in housing projects. These tax exemptions would reduce the ability for local governments to raise revenue.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Owners of commercial projects will benefit as they will be exempt from the paying the various taxes and assessments levied by state and local government.

D. FISCAL COMMENTS:

The Revenue Estimating Conference has not determined the fiscal impact to the state or local government as a result of this bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Section 18, Article VII of the State Constitution limits the power of the Legislature to enact laws impacting certain revenues and expenditures of municipalities and counties. The mandates provision may apply because the bill exempts from taxation all property used to provide access to essential goods and services necessary for daily living for persons residing in housing projects and all commercial projects that allow access to essential goods and services for persons of low income residing in housing projects. The Revenue Estimating Conference has not determined the fiscal impact to the state or local government as a result of this bill.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 7, 2012, the House Community & Military Affairs Subcommittee adopted an amendment authorizing the FHFC to utilize up to 10 percent of its annual allocation of low-income housing tax credits, nontaxable revenue bonds, and State Apartment Incentive Loan (SAIL) Program funds appropriated by the Legislature and allocated by requests for proposals or other competitive solicitation for high priority affordable housing projects. Such projects include housing to support economic development and job creation initiatives, housing for veterans and their families, and housing for other special needs populations.

The analysis has been amended to reflect the adoption of this amendment.