HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 437 Community Development
SPONSOR(S): Davis and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	12 Y, 0 N	Duncan	West
2) Finance & Tax Subcommittee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

House Bill 437 clarifies the process used by the Florida Housing Finance Corporation to allocate low-income housing tax credits and other federal and state resources. The bill modifies the annual reporting requirements, clarifies the information and reports included in the FHFC's audited financial statements, and removes obsolete terms and provisions.

The bill extends the expiration date of the Community Contribution Tax Credit to June 30, 2025.

The Revenue Estimating Conference has not determined the fiscal impact to the state as a result of this bill. *See* FISCAL COMMENTS.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Community Contribution Tax Credit Program

In 1980, the Florida Legislature established the Community Contribution Tax Credit Program (Program) to encourage private sector participation in revitalization and housing projects.[1] The Program offers tax credits, in the form of a refund, to persons who donate to sponsors who have been approved to participate in the Program. Eligible project sponsors[2] under the Program include a wide variety of community organizations, housing organizations, historic preservation organizations, units of state and local government, and regional workforce boards. Eligible projects[3] include the construction, improvement or rehabilitation of housing, commercial, industrial or public facilities, and projects that promote entrepreneurial or job development opportunities for low-income persons. A community contribution must be in the form of cash or other liquid assets; real property; goods or inventory; or other physical resources as identified by the Department of Economic Opportunity (DEO).[4]

DEO is responsible for marketing the Program in consultation with the Florida Housing Finance Corporation and other statewide and regional housing and financial intermediaries.[5] DEO is also responsible for administering the Program by reviewing sponsor project proposals and tax credit applications. To date, 131 sponsors have been approved to participate in the Program.[6] After the taxpayer receives approval for community contribution tax credits, it must claim the credit from the Department of Revenue (DOR).

The tax credits are equal to 50 percent of the amount donated up to $200,000 annually.[7] The tax credit may be applied toward the donor's sales and use, corporate, or insurance premium tax obligations.[8] The taxpayer may only apply the credits toward one tax obligation. Unused credits against corporate income taxes and insurance premium taxes may be carried forward for five years.[9] Unused credits against sales taxes may be carried forward for three years.[10]

The total amount of tax credits, which may be granted for the Community Contribution Tax Credit Program, is $10.5 million annually for projects that provide homeownership opportunities for low-income and very-low-income households and $3.5 million for all other projects.[11] During FY 2011-2012, 333 tax credit applications in 63 local governments were approved by DEO.[12]

The Florida Legislature has amended the dollar cap and the expiration date of the Program on numerous occasions. The Program began with an annual $3 million cap and it is currently $14 million and has reached the cap every fiscal year. The Community Contribution Tax Credit Program expires June 30, 2015.

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[1] Chapter 80-249, L.O.F.
[2] *See* ss. 212.08(5)(p)2.c., F.S.; 220.183(2)(c), F.S.; and 624.5105(2), F.S.
[3] *See* ss. 212.08(5)(p)2.b.; and 220.183(2)(d), F.S. *See* also s. 220.03(1)(t), F.S.
[4] Sections 212.08(5)(p)2.a., F.S.; 220.183(2)(a), F.S.; and 624.5105(5)(a), F.S.
[5] Section 220.183(4), F.S.
[6] Florida Department of Economic Opportunity, Community Contribution Program Staff, Document on file in the House Economic Development & Tourism Subcommittee, February 4, 2013.
[7] Sections 220.183 (1)(a) and (b), F.S.; 212.08(5)(p),
[8] *See* ss. 212.08(5)(p), F.S.; 220.183, F.S.; and 624.5105, F.S.
[9] Sections 220.183(1)(e), F.S.; and 624.5105, F.S.
[10] Section 212.08(5)(p)1.b., F.S.
[11] Sections 212.08(5)(p)1.e., F.S.; 220.183(1)(c), F.S.; and 624.5105(1)(c), F.S.
[12] *See* supra note 6.

Florida Housing Finance Corporation

The Florida Housing Finance Corporation (FHFC) [13] 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.[14] Originally, federal funds were the only resources that funded housing programs administered by the FHFC. To leverage these federal funds, in the late 1980s the Legislature appropriated funding for state programs. The FHFC administers a number of multifamily and single family housing programs, such as the State Apartment Incentive Loan Program, Florida Affordable Housing Guarantee Program, and the First Time Homebuyer Program, that assist Floridians in obtaining safe, decent affordable housing.

Chapter 2012-127, Law of Florida – Audit and Review of the FHFC

In 2012, the Legislature directed the Auditor General and the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct a joint audit and review of the programs and operations of the FHFC and to submit written reports to the Legislature no later than December 1, 2012. [15] Both reports were issued November 2012. The Auditor General's report addressed the FHFC's internal management and financial and operational controls and included recommendations. OPPAGA's report examined the corporation's governance structure, decision-making, and performance and identified areas for improvement.

Included in the Auditor General's report was the recommendation that the FHFC revise its travel policy to conform to the requirements of state law and s. 420.511(4), F.S., relating to the annual financial audit, be revised to identify the specific programs that should be subject to an annual compliance audit.[16] Additional findings recommended the FHFC modify internal operations and/or procedures and did not require statutory modifications. The FHFC has either further explained the rationale for its operating procedures or has agreed with and adopted the Auditor General's recommendations.[17]

OPPAGA's report examined the FHFC's governance structure, decision-making, and performance and identifies areas for improvement.[18] OPPAGA report summary stated:

> The Florida Housing Finance Corporation's board and executive director, the Governor, and the Legislature have roles in overseeing and directing corporation programs and staff. We found no compelling reason to change the current governance structure. However, to expand its role and enhance communication with the corporation, the Legislature could consider amending state law to provide for board appointments by the President of the Senate and the Speaker of the House of Representatives.
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> A major focus of the corporation's decision making is distributing federal low-income housing tax credits for affordable rental housing developments. To address concerns about the process, we suggest that the corporation consider reducing the frequency of rule development workshops; revising the time allowed for applicants to identify problems with each other's projects; and increasing the emphasis on considering market feasibility and project costs.
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> Most of the corporation's performance measures provide information on program outputs rather than program outcomes or cost-effectiveness. To enhance the

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[13] The Florida Housing Finance Corporation (FHFC) was created as 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.

[14] Section 420.502(7), F.S.

[15] Section 3, ch. 2012-127, L.O.F.

[16] State of Florida, Auditor General, *Florida Housing Finance Corporation – Audit Performed Pursuant to Chapter 2012-127, L.O.F.*, Report No. 2013-047, November 2012, *available at* http://www.myflorida.com/audgen/pages/pdf_files/2013-047.pdf.

[17] *Id*.

[18] The Florida Legislature, Office of Program Policy Analysis and Government Accountability, *The Florida Housing Finance Corporation Could Improve Its Tax Credit Allocation Process and Develop Better Performance Measures*, November 2012, Report No. 2012-10, available at http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1210rpt.pdf.

quality and utility of the data the corporation reports, the Legislature could consider expanding the statutorily required performance measures.[19]

FHFC Powers Related to the Allocation of Low-income Housing Tax Credits, the State Apartment Incentive Loan Program, and Other Federal or State Resources

Florida law grants the FHFC with specific powers necessary to carry out activities or implement programs to provide affordable housing.[20] Included in such authority is the FHFC's power to use up to 10 percent of its annual allocation of low-income housing tax credits, nontaxable revenue bonds, and State Apartment Incentive Loan Program (SAIL)[21] funds appropriated by the Legislature. FHFC may allocate available funds by requests for proposals or other competitive solicitation for high-priority affordable housing projects, such as housing to support economic development and job-creation initiatives, housing for veterans and their families, and other special needs populations as determined by the FHFC on an annual basis.[22]

Additionally, the Legislature has granted authority to the FHFC to establish, by rule, the procedure for evaluating, scoring, and competitively ranking all applications based on the criteria established under the SAIL Program.[23]

Process for Awarding Low-Income Housing Tax Credits and Other Funds

Currently, the FHFC allocates tax credits through a Universal Application Cycle that includes the allocation of other federal and state resources, depending on the availability of funds. In recent years, tax credits have provided the bulk of resources for rental housing developments.[24] In an effort to achieve transparency in the awarding of the federal low-income housing tax credits, the FHFC's process has become cumbersome and lengthy. According to the FHFC and documented by OPPAGA, the FHFC's process to allocate low-income housing tax credits occurs in four stages: rulemaking, application, underwriting, and construction and closing. For the last two cycles (2009 and 2011), the time taken to complete the process from the first rule development workshop hearing to the approval of final project rankings ranged from 12 to 14 months.[25] After the FHFC's Board of Directors approves final project rankings, developers are invited to credit underwriting, which can take an additional nine months.[26] The lengthy process increases the costs for both the FHFC and developers. Additionally, some stakeholders like the FHFC's open and transparent rulemaking and application process. However, others are concerned about the complexity of the process.[27]

FHFC Reporting Requirements: Business Plan, Strategic Plan, and Annual Report

The FHFC is required to develop a business plan for the provision of affordable housing in the state. The business plan must be consistent with the strategic plan[28] and must contain certain performance measures and specific performance targets.[29] A strategic plan for the provision of affordable housing

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[19] *Id*. at 1.
[20] *See* ss. 159.608 and 420.507, F.S.
[21] The SAIL Program annually provides low interest loans on a competitive basis to for-profit, nonprofit, and public entities to provide affordable housing to very-low-income persons. Program funds provide gap financing to allow developers to obtain the full financing needed to construct multifamily units. Special consideration is given to properties that target specific demographic groups such as the elderly, the homeless, families, and commercial fishing workers and farmworkers. Section 420.5087, F.S.; Florida Housing Finance Corporation, *A Summary of Florida Housing's Programs*, *available at* http://www.floridahousing.org/FH-ImageWebDocs/AboutUS/ProgramSummaries.pdf.
[22] Section 420.507(48), F.S.
[23] Section 420.507(22), F.S.
[24] *Supra* note 18 at 5.
[25] *Id*. at 6
[26] *Id*.
[27] *Id.* at 7.
[28] "Strategic plans" in ch. 186, F.S., were renamed "long-range program plans" pursuant to ch. 2000-371, L.O.F. Each state agency is required to develop a long-range program plan on an annual basis. The plan must provide the framework and context for designing and interpreting the agency budget request. The plan will be developed through careful examination and justification of agency functions and their associated costs. It must be used by the agency to implement the state's goals and objectives. Indicators must be developed to measure service and activity performance. *See* s. 186.021, F.S.
[29] Section 420.511(1), F.S.

relating to the state and regional planning requirements in chapter 186, F.S., is required to be developed annually, in equal partnership with DEO.

The FHFC is also required to submit to the Governor and the Legislature, within 2 months after the end of its fiscal year, a complete and detailed report, which provides the following information:[30]

- Operations and accomplishments;
- Receipts and expenditures during its fiscal year in accordance with the categories or classifications established by the FHFC for its operating and capital outlay purposes;
- Assets and liabilities at the end of its fiscal year and the status of reserve, special, or other funds;
- A schedule of its bonds outstanding at the end of its fiscal year, together with a statement of the principal amounts of bonds issued and redeemed during the fiscal year; and
- Information relating to the FHFC's activities in implementing the SAIL Program, the Florida Homeownership Assistance Program (HAP),[31] and the Community Workforce Housing Innovation Pilot Program.[32]

The report must include, but not be limited to:[33]

- The number of people served, delineated by income, age, family size, and racial characteristics;
- The number of units produced under each program;
- The average cost of producing units under each program;
- The average sales price of single-family units financed under the Florida Homeownership Assistance Program;
- The average amount of rent charged based on unit size on units financed under the SAIL Program;
- The number of persons in rural communities served under each program;
- The number of farmworkers served under each program;
- The number of homeless persons served under each program;
- The number of elderly persons served under each program;
- The extent to which geographic distribution has been achieved in accordance with the provisions of the SAIL Program;
- The success of the Community Workforce Housing Innovation Pilot Program in meeting the housing needs of eligible areas; and
- Any other information the FHFC deems appropriate.

The FHFC must also submit a copy of an annual financial audit of its accounts and records and an annual compliance audit of its programs conducted by an independent certified public accountant performed in accordance with generally accepted auditing standards and government auditing standards.[34] Both FHFC's business plan and annual report must recognize the different fiscal periods under which the FHFC, the state, the Federal Government, and local governments operate.[35]

Effect of Proposed Changes

Community Contribution Tax Credit Program

The bill extends the expiration date of the Community Contribution Tax Credit to June 30, 2025.

Florida Housing Finance Corporation

The bill removes the FHFC's authority to establish a procedure for evaluating, scoring and competitively ranking such applications. Thus, the FHFC would have the flexibility to modify its process of competitively evaluating and selecting applications for funding.

[30] Section 420.511(3)(a), F.S.
[31] *See* s. 420.5088, F.S.
[32] *See* s. 420.5095, F.S.
[33] Section 420.511(3)(b), F.S.
[34] Section 420.511(4), F.S.
[35] Section 420.511(5), F.S.

Current law authorizes the FHFC to use up to 10 percent of its annual allocation of low-income housing tax credits, nontaxable revenue bonds, and SAIL funds appropriated by the Legislature for high-priority affordable housing projects. However, the FHFC does not always receive an annual allocation of these funds. For example, the most recent appropriation of SAIL funds occurred in FY 2008-09. Therefore, the bill modifies this provision to clarify that the FHFC has the authority to reserve up to 10 percent of each allocation of low-income housing tax credits, nontaxable revenue bonds, and SAIL funds for high-priority affordable housing projects.

Business Plan and Long-Range Program Plan

The business plan is renamed strategic business plan, which must be consistent with the long-range program plan. Currently, as part of the business plan, the FHFC must compile data on the stimulus of economic activity created by the affordable housing finance programs administered by the FHFC. This information is removed from the business plan and included in the annual report.

Annual Report

The annual report is revised to require the following tenant characteristics for existing rental units financed through all programs administered by the FHFC be included in the annual report:

- The number of households served, delineated by income and age of the head of the household. However, the tenant characteristic data captured would no longer include race.
- The number of households served in large, medium, and small counties as defined pursuant to the SAIL Program[36] and the extent to which geographic distribution has been achieved.
- The number of farmworkers and commercial-fishing worker households served.
- The number of homeless households served.
- The number of special needs households served.
- By county, the average rent charged based on unit size. Currently, this information is required to be reported by county.

The required tenant characteristics are required to be captured by household than by persons. According to the FHFC, housing need and supply data is collected on the national level by household and collecting such data by household would permit the FHFC to conduct a more accurate comparison and analysis of its programs and activities.

The annual report must also include:

- The estimated average cost of producing units under each rental or homeownership unit financed under each program in the last fiscal year. Currently, this information is only provided for the SAIL and HAP Programs.
- The number of rental units to which resources have been allocated in the last fiscal year, including income and demographic restrictions.
- By county, the average sales of homeownership units financed in the last fiscal year. Currently, this information is only provided for the HAP Program.
- The number of households served by homeownership programs in the last fiscal year, including the income and age of the homeowner of each household.
- The amount of economic stimulus created by the affordable housing finance programs administered by the FHFC for the most recent year available. This information was originally included the FHFC's business plan.
- For the SAIL Program, a comprehensive list of all closed loans outstanding at the end of the most recent fiscal year, including, but not limited to, the development's name and location, developer's name, set-aside type, set-aside percentage, affordability term, total number of units, number of set-aside units, lien position, original loan amount, loan maturity date, loan balance at the close of the year, loan status, rate of interest, and interest paid.
- For the Affordable Housing Guarantee Program, a list of all guaranteed loans through the close of the most recent fiscal year, including, but limited to, the development's name and location,

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[36] The SAIL Program defines counties as follows: counties that have a population of 825,000 or more; counties that have a population of more than 100,000 but less than 825,000; and counties that have a population of 100,000 or less. *See* s. 420.4087, F.S.

developer's name, total number of units, issuer of the bonds, loan maturity date, participation in the U.S. Department of Housing and Urban Development Risk-Sharing Program, original guarantee amount, guarantee amount at the close of fiscal year, status of the guaranteed loans, and the total outstanding FHFC Affordable Housing Guarantee Revenue Bonds at the close of the most recent fiscal year.
- Any other information the FHFC deems appropriate.

The bill removes a requirement that the annual report include information relating to the success of the Community Workforce Housing Innovation Pilot (CWHIP) Program in meeting the housing needs of eligible areas. This pilot program is no longer funded.

Audited Financial Statements

The bill modifies provisions related to the FHFC's audited financial statements to require the FHFC to submit, within six months after the end of its fiscal year, audited financial statements prepared in accordance with generally accepted accounting principles, which include all assets, liabilities, revenues, and expenses of the FHFC, and a list of all bonds outstanding at the end of its fiscal year. As required in current law, the audit must be conducted by an independent certified public accountant and performed in accordance with generally accepted auditing standards and government auditing standards. However, the bill requires the audit to incorporate all reports, including compliance reports, as required by such auditing standards.

Additional provisions are revised to conform cross-references.

B. SECTION DIRECTORY:

Section 1: Amends s. 212.08, F.S., to extend the expiration date of the application of the community contribution tax credit against the sales and use tax to June 30, 2025.

Section 2: Amends s. 220.183, F.S., to extend the expiration date of the application of the community contribution tax credit against the corporate income tax to June 30, 2025.

Section 3: Amends s. 624.5105, F.S., to extend the expiration date of the application of the community contribution tax credit against the insurance premium tax to June 30, 2025

Section 4: Amends s. 420.507(22)(h), F.S., relating to the powers of the corporation, to clarify the procedure for competitively evaluating and selecting all applications for funding.

Section 5: Amends s. 420.5087(6), F.S., relating to the SAIL Program, to clarify the procedure for competitively evaluating and selecting all applications for funding.

Section 6: Amends s. 420.511, F.S., relating to the FHFC's annual reporting and auditing requirements, to require additional information for inclusion in the FHFC's annual report to the Governor and the Legislature; revise the provisions relating to the annual financial audit to specify what information must be included in the audited financial statements; and remove obsolete language.

Section 7: Amends s. 420.003(4)(b), F.S., relating to the implementation of the housing strategy, to conform cross-references.

Section 8: Amends s. 420.0006, F.S., relating to the authority to contract with the corporation; contract requirements; and nonperformance, to conform cross-references.

Section 9: Amends s. 420.504(1), F.S., relating to public corporation; creation; membership; terms; and expenses to conform cross-references.

Section 10: Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Available tax credits under the Community Contribution Tax Credit Program may be taken against sales and use taxes, corporate income taxes, and insurance taxes. The bill may have a negative fiscal impact of up to $14 million annually for ten years beginning in FY 2015-16, depending on the use of the tax credits.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

With respect to the Community Contribution Tax Credit Program, the bill may have a positive impact on the number of homeownership opportunities for low-income or very-low-income households and other projects such as those which provide job-development opportunities for low-income persons.

To the extent that the Florida Housing Finance Corporation modifies it process for issuing requests for proposals or competitive solicitation in order to allocate funds and low-income housing tax credits, the private sector and the public may benefit.

D. FISCAL COMMENTS:

The table below shows the tax credits granted for housing projects and other community development projects since the cap was increased to $14 million.

Community Contribution Tax Credit Program
Tax Credit Summary FY 2006/2007 – FY 2011/2012[37]

FISCAL YEAR	TOTAL APPROVED APPLICATIONS	HOUSING TAX CREDITS APPROVED	COMMUNITY DEVELOPMENT TAX CREDITS APPROVED	TOTAL CREDITS APPROVED

[37] Florida Department of Economic Opportunity, Community Contribution Program Staff, Email, January 4, 2013.

2006/07	283	$10,499,953	$3,500,000	$13,999,953
2007/08	286	$10,500,000	$3,500,000	$14,000,000
2008/09	351	$13,000,000	$3,500,000	$16,500,000
2009/10	308	$10,500,000	$3,500,000	$14,000,000
2010/11	308	$10,500,000	$3,500,000	$14,000,000
2011/12	333	$10,486,406	$3,500,000	$13,986,406
TOTALS	**1,869**	**$65,486,359**	**$21,000,000**	**$86,486,359**

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not grant any additional rule-making authority for the Department of Economic Opportunity or the Florida Housing Finance Corporation.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A.