

Committee Substitute for House Bill No. 3287

An act relating to affordable housing; amending s. 420.0005, F.S.; clarifying application of certain provisions to the State Housing Fund; amending s. 420.0006, F.S.; specifying an additional requirement for contracts with the Florida Housing Finance Corporation; providing duties of the Comptroller relating to certain advances to the corporation; amending s. 420.503, F.S.; clarifying application to the corporation's fiscal year; amending s. 420.504, F.S.; providing for alternative public notice; providing the corporation is an instrumentality of the state; deleting a definition; amending s. 420.5061, F.S.; declaring the corporation a state agency for certain purposes; providing that the corporation may provide infrastructure improvements; amending s. 420.507, F.S.; including services within certain procurement requirement provisions; authorizing the corporation to mortgage certain property; deleting a budget limitation on certain programs; providing additional powers of the corporation; amending s. 420.5087, F.S.; clarifying application of the state fiscal year; amending s. 420.5088, F.S.; expanding availability of certain program funds; amending s. 420.5089, F.S.; deleting a requirement for certain program fund loan commitments under certain circumstances; amending s. 420.509, F.S.; clarifying application of provisions for public sale of corporation bonds; amending s. 420.511, F.S.; revising requirements for the corporation's business plan for affordable housing; amending s. 420.512, F.S.; limiting application of a term for certain purposes; amending s. 420.528, F.S.; clarifying application to the corporation's fiscal year; amending s. 420.9071, F.S.; correcting a cross reference; clarifying application to the corporation's fiscal year; amending ss. 420.9073 and 420.9079, F.S.; clarifying application to the state fiscal year; repealing s. 420.504(8), F.S., relating to certain liability of members of the board of directors of the corporation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 420.0005, Florida Statutes, is amended to read:

420.0005 State Housing Trust Fund.—There is hereby established in the State Treasury a separate trust fund to be named the "State Housing Trust Fund." There shall be deposited in the fund all moneys appropriated by the Legislature, or moneys received from any other source, for the purpose of this chapter, and all proceeds derived from the use of such moneys. The fund shall be administered by the Florida Housing Finance Corporation on behalf of the department, as specified in this chapter. Money deposited to the fund and appropriated by the Legislature must, notwithstanding the provisions of chapter 216 or s. 420.504(3), be transferred quarterly in advance, to the extent available, or, if not so available, as soon as received into the State Housing Trust Fund, and subject to the provisions of s. 420.5092(6)(a) and (b) by the Comptroller to the corporation upon certification by the Secretary

of Community Affairs that the corporation is in compliance with the requirements of s. 420.0006. The certification made by the secretary shall also include the split of funds among programs administered by the corporation and the department as specified in chapter 92-317, Laws of Florida, as amended. Moneys advanced by the Comptroller must be deposited by the corporation into a separate fund established with a qualified public depository meeting the requirements of chapter 280 to be named the "State Housing Fund" and used for the purposes of this chapter. Administrative and personnel costs incurred in implementing this chapter may be paid from the State Housing Fund, but such costs may not exceed 5 percent of the moneys deposited into such the fund. To the State Housing this Fund shall be credited all loan repayments, penalties, and other fees and charges accruing to such the fund under this chapter. It is the intent of this chapter that all loan repayments, penalties, and other fees and charges collected be credited in full to the program account from which the loan originated. Moneys in the State Housing Fund which are not currently needed for the purposes of this chapter shall be invested in such manner as is provided for by statute. The interest received on any such investment shall be credited to the State Housing Fund.

Section 2. Section 420.0006, Florida Statutes, is amended to read:

420.0006 Authority to contract with corporation.—The secretary of the department shall contract, notwithstanding the provisions of part I of chapter 287, with the Florida Housing Finance Corporation on a multiyear basis to stimulate, provide, and foster affordable housing in the state. The contract must incorporate the performance measures required by s. 420.511 and must be consistent with the provisions of the corporation's strategic plan prepared in accordance with s. 420.511 and compatible with s. 216.0166. The contract must provide that, in the event the corporation fails to comply with any of the performance measures required by s. 420.511, the secretary shall notify the Governor and shall refer the nonperformance to the department's inspector general for review and determination as to whether such failure is due to forces beyond the corporation's control or whether such failure is due to inadequate management of the corporation's resources. Advances shall continue to be made pursuant to s. 420.0005 during the pendency of the review by the department's inspector general. If such failure is due to outside forces, it shall not be deemed a violation of the contract. If such failure is due to inadequate management, the department's inspector general shall provide recommendations regarding solutions. The Governor is authorized to resolve any differences of opinion with respect to performance under the contract and may request to direct that advances continue in the event of a failure under the contract due to inadequate management. The Comptroller shall approve the request absent a finding by the Comptroller that continuing such advances would adversely impact the state; however, in any event the Comptroller shall provide advances sufficient to meet the debt service requirements of the corporation and sufficient to fund contracts committing funds from the State Housing Trust Fund so long as such contracts are in accordance with the laws of this state. The department inspector general shall perform for the corporation the functions set forth in s. 20.055 and report to the secretary of the department. The corporation shall be deemed an agency for the purposes of s. 20.055.

Section 3. Subsection (35) of section 420.503, Florida Statutes, is amended to read:

420.503 Definitions.—As used in this part, the term:

(35) “Service provider,” except as otherwise defined in s. 420.512(5), means a law firm, investment bank, certified public accounting firm, auditor, trustee bank, credit underwriter, homeowner loan servicer, or any other provider of services to the corporation which offers to perform or performs services to the corporation or other provider for fees in excess of \$25,000 in the aggregate during any fiscal year of the corporation. The term includes the agents, officers, principals, and professional employees of the service provider.

Section 4. Subsections (1), (2), and (9) of section 420.504, Florida Statutes, are amended to read:

420.504 Public corporation; creation, membership, terms, expenses.—

(1) There is created within the Department of Community Affairs a public corporation and a public body corporate and politic, to be known as the “Florida Housing Finance Corporation.” It is declared to be the intent of and constitutional construction by the Legislature that the Florida Housing Finance Corporation constitutes an entrepreneurial public corporation organized to provide and promote the public welfare by administering the governmental function of financing or refinancing housing and related facilities in Florida and that the corporation is not a department of the executive branch of state government within the scope and meaning of s. 6, Art. IV of the State Constitution, but is functionally related to the Department of Community Affairs in which it is placed. The executive function of state government to be performed by the secretary of the department in the conduct of the business of the Florida Housing Finance Corporation must be performed pursuant to a an annual contract to monitor and set performance standards for the implementation of the business plan for the provision of housing approved for the corporation as provided in s. 420.0006. This contract shall include the performance standards for the provision of affordable housing in Florida established in the business plan described in s. 420.511.

(2) The corporation is constituted as a public instrumentality, and the exercise by the corporation of the power conferred by this act is considered to be the performance of an essential public function. The corporation shall constitute an agency for the purposes of s. 120.52. The corporation is subject to chapter 119, subject to exceptions applicable to the corporation, and to the provisions of chapter 286; however, the corporation shall be entitled to provide notice of internal review committee meetings for competitive proposals or procurement to applicants by mail or facsimile rather than by means of publication. The corporation is not governed by chapter 607, but by the provisions of this part. If for any reason the establishment of the corporation is deemed in violation of law, such provision is severable and the remainder of this act remains in full force and effect.

(9) The corporation is a corporation primarily acting as an instrumentality of the state, within the meaning of s. 768.28. For purposes of this section,

the term “recklessness” means the acting, or omission to act, in conscious disregard of a risk:

(a) ~~Known, or so obvious that it should have been known, to the member; and~~

(b) ~~Known to the member, or so obvious that it should have been known, to be so great as to make it highly probable that harm would follow from the action or omission.~~

Section 5. Section 420.5061, Florida Statutes, is amended to read:

420.5061 Transfer of agency assets and liabilities.—Effective January 1, 1998, all assets and liabilities and rights and obligations, including any outstanding contractual obligations, of the agency shall be transferred to the corporation as legal successor in all respects to the agency. The corporation shall thereupon become obligated to the same extent as the agency under any existing agreements and be entitled to any rights and remedies previously afforded the agency by law or contract, including specifically the rights of the agency under chapter 201 and part VI of chapter 159. The corporation is a state agency for purposes of s. 159.807(4)(a). Effective January 1, 1998, all references under Florida law to the agency are deemed to mean the corporation. The corporation shall transfer to the General Revenue Fund an amount which otherwise would have been deducted as a service charge pursuant to s. 215.20(1) if the Florida Housing Finance Corporation Fund established by s. 420.508(5), the State Apartment Incentive Loan Fund established by s. 420.5087(7), the Florida Homeownership Assistance Fund established by s. 420.5088(5), the HOME Investment Partnership Fund established by s. 420.5089(1), and the Housing Predevelopment Loan Fund established by s. 420.525(1) were each trust funds. For purposes of s. 112.313, the corporation is deemed to be a continuation of the agency, and the provisions thereof are deemed to apply as if the same entity remained in place. Any employees of the agency and agency board members covered by s. 112.313(9)(a)6. shall continue to be entitled to the exemption in that subparagraph, notwithstanding being hired by the corporation or appointed as board members of the corporation. Effective January 1, 1998, all state property in use by the agency shall be transferred to and become the property of the corporation.

Section 6. Subsections (27), (29), and (30) of section 420.507, Florida Statutes, are amended, and subsections (34) and (35) are added to said section, to read:

420.507 Powers of the corporation.—The corporation shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this part, including the following powers which are in addition to all other powers granted by other provisions of this part:

(27) Notwithstanding the provisions of chapter 282 and part I of chapter 287, to establish guidelines for and to implement the purchase and procurement of materials and services for use by the corporation.

(29) To own real and personal property for the purposes of this part, to mortgage such property, and to sell the property without regard to the provisions of chapters 253 and 270.

(30) To prepare and submit to the secretary of the department a budget request for purposes of the corporation, which request shall, notwithstanding the provisions of chapter 216 and in accordance with s. 216.351, contain a request for operational expenditures and separate requests for other authorized corporation programs, each of which shall be classified as a special category appropriation. The request shall not be required to contain information on the number of employees, salaries, or any classification thereof, and the approved operating budget therefor need not comply with s. 216.181(7)-(9). The secretary is authorized to include within the department's budget request the corporation's budget request in the form as authorized by this section.

(34) To establish the corporation's fiscal year.

(35) To preclude from further participation in any of the corporation's programs, for a period of up to 2 years, any applicant or affiliate of an applicant which has made a material misrepresentation or engaged in fraudulent actions in connection with any application for a corporation program.

(36) To provide for the development of infrastructure improvements and rehabilitation primarily in connection with residential housing consistent with the applicable local government comprehensive plan.

Section 7. Subsection (7) of section 420.5087, Florida Statutes, is amended to read:

420.5087 State Apartment Incentive Loan Program.—There is hereby created the State Apartment Incentive Loan Program for the purpose of providing first, second, or other subordinated mortgage loans or loan guarantees to sponsors, including for-profit, nonprofit, and public entities, to provide housing affordable to very-low-income persons.

(7) There is authorized to be established by the corporation with a qualified public depository meeting the requirements of chapter 280 a separate fund to be named the "State Apartment Incentive Loan Fund," which shall be administered by the corporation according to the provisions of this program. Any amounts held in the State Apartment Incentive Loan Trust Fund for such purpose as of January 1, 1998, must be transferred to the corporation for deposit in the State Apartment Incentive Loan Fund and the State Apartment Incentive Loan Trust Fund must be closed. There shall be deposited into the fund moneys from the State Housing Trust Fund as created by s. 420.0005, or moneys received from any other source, for the purpose of this program and all proceeds derived from the use of such moneys. In addition, all loan repayments, proceeds from the sale of any property, and any other proceeds that would otherwise accrue pursuant to the activities conducted under the provisions of the State Apartment Incentive Loan Program shall be deposited in the fund and shall not revert to the General Revenue Fund. Expenditures from the State Apartment Incentive Loan Fund shall not be

required to be included in the corporation's budget request or be subject to appropriation by the Legislature. If a loan commitment for program funds is entered into during the state fiscal year for which the program funds were appropriated, the funds shall continue to be made available for use during the entire construction period, even if it extends beyond the state fiscal year in which the loan commitment was entered.

Section 8. Subsection (4) of section 420.5088, Florida Statutes, is amended to read:

420.5088 Florida Homeownership Assistance Program.—There is created the Florida Homeownership Assistance Program for the purpose of assisting low-income persons in purchasing a home by reducing the cost of the home with below-market construction financing, by reducing the amount of down payment and closing costs paid by the borrower to a maximum of 5 percent of the purchase price, or by reducing the monthly payment to an affordable amount for the purchaser. Loans shall be made available at an interest rate that does not exceed 3 percent. The balance of any loan is due at closing if the property is sold or transferred.

(4) During the first 9 months of fund availability each fiscal year:

(a) Sixty percent of the program funds shall be reserved for use by borrowers pursuant to s. 420.507(23)(a)1.;

(b) Twenty percent of the program funds shall be reserved for use by borrowers pursuant to s. 420.507(23)(a)2.; and

(c) Twenty percent of the program funds shall be reserved for use by borrowers pursuant to s. 420.507(23)(a)3.

If the application of these percentages would cause the reservation of program funds under paragraph (a) to be less than \$1 million, the reservation for paragraph (a) shall be increased to \$1 million or all available funds, whichever amount is less, with the increase to be accomplished by reducing the reservation for paragraph (b) and, if necessary, paragraph (c).

Section 9. Subsection (1) of section 420.5089, Florida Statutes, is amended to read:

420.5089 HOME Investment Partnership Program; HOME fund.—

(1) There is authorized to be established by the corporation with a qualified public depository meeting the requirements of chapter 280 the HOME Investment Partnership Fund, which shall be administered by the corporation according to the provisions of the HOME Investment Partnership Program which is hereby created. Any amounts held in the HOME Partnership Trust Fund for such purposes as of January 1, 1998, must be transferred to the corporation for deposit in the HOME Investment Partnership Fund, whereupon the HOME Partnership Trust Fund must be closed. There shall be deposited into the fund moneys from the State Housing Trust Fund or moneys received from any other source for the purpose of this program, and all proceeds derived from the use of such moneys. In addition, all loan

repayments, proceeds from the sale of any property, and any other proceeds that would otherwise accrue pursuant to the activities conducted under the provisions of the HOME Investment Partnership Program shall be deposited into the fund and shall not revert to the General Revenue Fund. Expenditures from the HOME Investment Partnership Fund shall not be required to be included in the corporation's budget request or be subject to appropriation by the Legislature. ~~If a loan commitment for program funds is entered into during the state fiscal year for which the program funds were appropriated, the funds shall continue to be made available for use during the entire construction period of any project financed by the program, even if it extends beyond the fiscal year in which the loan commitment was entered.~~

Section 10. Paragraph (a) of subsection (12) of section 420.509, Florida Statutes, is amended to read:

420.509 Bonds; purpose, terms, approval, limitations.—

(12)(a) Subject to paragraph (b), the bonds issued by the corporation shall be sold at public sale in the manner provided by s. 215.68, with the corporation performing the duties of the board as provided in such section. However, if the corporation shall by official action at a public meeting determine that a negotiated sale of the bonds is in the best interest of the corporation, the corporation may negotiate for sale of the bonds to, or the placement of bonds through, the underwriter or underwriters designated by the corporation. In the official action authorizing the negotiated sale, the corporation shall provide specific findings as to the reasons for the negotiated sale. The reasons shall include, but shall not be limited to, characteristics of the bond issue and prevailing market conditions that necessitate a negotiated sale. In the event the corporation decides to negotiate for a sale of bonds, the managing underwriter, or financial consultant or adviser, if applicable, shall provide to the corporation, prior to the award of bonds to the managing underwriter, a disclosure statement containing the following information:

1. An itemized list setting forth the nature and estimated amounts of expenses to be incurred by the managing underwriter in connection with the issuance of such bonds. Notwithstanding the foregoing, any such list may include an item for miscellaneous expenses, provided it includes only minor items of expense which cannot be easily categorized elsewhere in the statement.

2. The names, addresses, and estimated amounts of compensation of any finders connected with the issuance of the bonds.

3. The amount of underwriting spread expected to be realized.

4. Any management fee charged by the managing underwriter.

5. Any other fee, bonus, or compensation estimated to be paid by the managing underwriter in connection with the bond issue to any person not regularly employed or retained by it.

6. The name and address of the managing underwriter or underwriters, if any, connected with the bond issue.

7. Any other disclosure that the corporation may require.

This paragraph is not intended to restrict or prohibit the employment of professional services relating to bonds issued under this chapter.

Section 11. Subsections (1) and (3) of section 420.511, Florida Statutes, are amended to read:

420.511 Business plan; strategic plan; annual report.—

(1) The corporation shall develop a business plan for the provision of affordable housing for the state. The plan shall not be inconsistent with the strategic plan prepared pursuant to subsection (2) and shall contain performance measures and specific performance targets for the following:

(a) The ability of low-income and moderate-income Floridians to access housing that is decent and affordable.

(b) The continued availability and affordability of housing financed by the corporation to target populations.

(c) The availability of affordable financing programs, including equity and debt products, and programs that reduce gaps in conventional financing, to increase individual access to housing and stimulate private production of affordable housing.

~~(d) The stimulus of economic activity created by the affordable housing finance programs administered by the corporation.~~

~~(d)(e)~~ The establishment and maintenance of efficiencies in the delivery of affordable housing.

~~(e)(f)~~ Such other measures as directed by the corporation's board of directors.

The corporation shall also compile data on the stimulus of economic activity created by the affordable housing finance programs administered by the corporation.

(3) The corporation shall submit to the Governor and the presiding officers of each house of the Legislature, within 2 ~~6~~ months after the end of its fiscal year, a complete and detailed report setting forth:

(a) Its operations and accomplishments;

(b) Its receipts and expenditures during ~~its~~ the fiscal year in accordance with the categories or classifications established by the corporation for its operating and capital outlay purposes;

(c) Its assets and liabilities at the end of its fiscal year and the status of reserve, special, or other funds;

(d) 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

(e) Information relating to the corporation's activities in implementing the provisions of ss. 420.5087 and 420.5088. The report required by this subsection shall include, but not be limited to:

1. The number of people served, delineated by income, age, family size, and racial characteristics.
2. The number of units produced under each program.
3. The average cost of producing units under each program.
4. The average sales price of single-family units financed under s. 420.5088.
5. The average amount of rent charged based on unit size on units financed under s. 420.5087.
6. The number of persons in rural communities served under each program.
7. The number of farmworkers served under each program.
8. The number of elderly persons served under each program.
9. The extent to which geographic distribution has been achieved in accordance with the provisions of s. 420.5087.
10. Any other information the corporation deems appropriate.

Section 12. Subsection (5) of section 420.512, Florida Statutes, is amended to read:

420.512 Conflicts of interest.—

(5) Service providers shall comply with the following standards of conduct as a condition of eligibility to be considered or retained to provide services. For purposes of paragraphs (a), (b), and (c) this section only, the term "service provider" means and is limited to a law firm, an investment bank, or a credit underwriter, and the agents, officers, principals, and professional employees of the service provider.

(a) A service provider may not make contributions in any amounts, directly or indirectly, for or on behalf of candidates for Governor, nor shall any service provider make a contribution in excess of \$100 to any candidate for a member of the State Board of Administration other than the Governor in Florida while the service provider is included in an applicant pool from which service providers are selected to provide services to the corporation, while the service provider provides services to the corporation, and for the longer of a period of 2 years thereafter or for a period through the next general election for Governor.

(b) The service provider shall not participate in fundraising activities for or on behalf of candidates for Governor in Florida while the service provider is included in an applicant pool from which service providers are selected to

provide services to the corporation, while the service provider provides services to the corporation, and for the longer of a period of 2 years thereafter or for a period through the next general election for Governor.

(c) Service providers shall provide to the corporation a statement that the service provider has not contributed to candidates for Governor or contributed in excess of the amounts allowed by this section for a member of the State Board of Administration ~~Cabinet position~~ or engaged in fundraising activities for or on behalf of candidates for Governor in Florida since the effective date of this section or during the 24 months preceding the service provider's application to provide services to the corporation, whichever period is shorter.

(d) The service provider may not engage in prohibited business solicitation communications with officers, members, or covered employees of the corporation.

(e) If a service provider is in doubt as to whether its activities, or the activities of its principals, agents, or employees, violate the provisions of this section, it may request a declaratory statement in accordance with the applicable rule and s. 120.565.

(f) If the corporation determines that a service provider has failed to meet the provisions of this section, it shall consider the magnitude of the violation and whether there has been a pattern of violations in determining whether to terminate or decline to enter into contracts with the service provider.

Section 13. Subsection (2) of section 420.528, Florida Statutes, is amended to read:

420.528 Rules; annual reports.—

(2) The corporation shall submit, within the annual report required by s. 420.511, a summary of loans and grants made, loan and grant recipients, loan commitments received by sponsors, persons or families housed, projects initiated and completed, and the balance on all loans outstanding at the end of each fiscal year of the corporation.

Section 14. Subsections (4) and (23) of section 420.9071, Florida Statutes, are amended to read:

420.9071 Definitions.—As used in ss. 420.907-420.9079, the term:

(4) "Annual gross income" means annual income as defined under the Section 8 housing assistance payments programs in 24 C.F.R. part 5 843; annual income as reported under the census long form for the recent available decennial census; or adjusted gross income as defined for purposes of reporting under Internal Revenue Service Form 1040 for individual federal annual income tax purposes. Counties and eligible municipalities shall calculate income by projecting the prevailing annual rate of income for all adults in the household as the amount of income to be received in a household during the 12 months following the effective date of the determination.

(23) "Population" means the latest official state estimate of population certified pursuant to s. 186.901 prior to the beginning of the state fiscal year.

Section 15. Subsection (3) of section 420.9073, Florida Statutes, is amended to read:

420.9073 Local housing distributions.—

(3) Calculation of guaranteed amounts:

(a) The guaranteed amount under subsection (1) shall be calculated for each state fiscal year by multiplying \$350,000 by a fraction, the numerator of which is the amount of funds distributed to the Local Government Housing Trust Fund pursuant to s. 201.15(6) and the denominator of which is the total amount of funds distributed to the Local Government Housing Trust Fund pursuant to s. 201.15.

(b) The guaranteed amount under subsection (2) shall be calculated for each state fiscal year by multiplying \$350,000 by a fraction, the numerator of which is the amount of funds distributed to the Local Government Housing Trust Fund pursuant to s. 201.15(7) and the denominator of which is the total amount of funds distributed to the Local Government Housing Trust Fund pursuant to s. 201.15.

Section 16. Subsection (2) of section 420.9079, Florida Statutes, is amended to read:

420.9079 Local Government Housing Trust Fund.—

(2) The corporation shall administer the fund exclusively for the purpose of implementing the programs described in ss. 420.907-420.9078 and this Section. With the exception of monitoring the activities of counties and eligible municipalities to determine local compliance with program requirements, the corporation shall not receive appropriations from the fund for administrative or personnel costs. For the purpose of implementing the compliance monitoring provisions of s. 420.9075(8), the corporation may request a maximum of \$200,000 per state fiscal year. When such funding is appropriated, the corporation shall deduct the amount appropriated prior to calculating the local housing distribution pursuant to ss. 420.9072 and 420.9073.

Section 17. Subsection (8) of section 420.504, Florida Statutes, is repealed.

Section 18. This act shall take effect upon becoming a law.

Became a law without the Governor's approval May 14, 1998.

Filed in Office Secretary of State May 13, 1998.