

## CHAPTER 2013-83

### Committee Substitute for Committee Substitute for House Bill No. 437

An act relating to community development; amending s. 159.603, F.S.; revising the definition of “qualifying housing development”; amending s. 159.608, F.S.; revising the power of a housing finance authority to make loans directly to eligible persons; amending s. 196.1978, F.S.; deleting an ad valorem tax exemption for property owned by certain Florida-based limited partnerships and used for affordable housing for certain income-qualified persons; providing for retroactive application; amending s. 420.507, F.S.; revising the powers of the Florida Housing Finance Corporation; specifying how the corporation will allocate certain funds; amending s. 420.5087, F.S.; revising provisions relating to state apartment incentive loans to provide for a competitive evaluation and selection process with respect to loan applications; amending s. 420.511, F.S.; providing that the corporation’s strategic business plan must be consistent with a long-range program plan relating to affordable housing; deleting a requirement that the corporation compile certain data; revising provisions relating to the corporation’s development of its long-range plan; revising the required contents and information to be included in the corporation’s annual report; requiring the corporation to submit separate audited financial statements that include specified information and incorporate certain reports; requiring the Auditor General to conduct an operational audit of the corporation and provide a written report to the Legislature; amending ss. 420.0003, 420.0006, 420.504, and 420.506, F.S.; conforming provisions to changes made by this act; repealing s. 420.5091, F.S., relating to the federal Homeownership and Opportunity for People Everywhere (HOPE) program; providing effective dates.

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

Section 1. Subsection (6) of section 159.603, Florida Statutes, is amended to read:

159.603 Definitions.—As used in this part, the following words and terms have the following meanings unless the context indicates another or different meaning or intent.

(6) “Qualifying housing development” means any work or improvement located or to be located in this ~~the~~ state, including real property, buildings, and any other real and personal property, designed or intended for the primary purpose of providing decent, safe, and sanitary residential housing for four or more families, at least 60 percent of whom are eligible persons, whether new construction, the acquisition of existing residential housing, or the remodeling, improvement, rehabilitation, or reconstruction of existing housing, together with such related nonhousing facilities as the authority determines to be necessary, convenient, or desirable.

(a) The term includes a housing development that meets the definition of a “qualified low-income housing project” under s. 42(g) of the Internal Revenue Code, regardless of whether such development meets the 60-percent eligible persons requirement under this subsection.

(b) The exception provided under paragraph (a) applies to all housing developments meeting the federal definition for “qualified low-income housing project” as well as all developments that previously qualified under the state definition for “qualifying housing development.” Housing finance authorities may enter into regulatory agreement amendments as necessary to accommodate housing developments that qualify under paragraph (a).

Section 2. Subsection (8) of section 159.608, Florida Statutes, is amended to read:

159.608 Powers of housing finance authorities.—A housing finance authority shall constitute a public body corporate and politic, exercising the public and essential governmental functions set forth in this act, and shall exercise its power to borrow only for the purpose as provided herein:

~~(8) To make loans directly to eligible persons or families who otherwise cannot borrow from conventional lending sources and whose annual income does not exceed 80 percent of the median income based on a family of up to four persons for the county in which they seek to purchase a residence. The housing finance authority may adjust the annual income requirements for families of greater than four persons. Such loans must be secured by either first mortgages or subordinated mortgages and must be used to purchase, construct, rehabilitate, or refinance single-family residences that have purchase prices that do not exceed the purchase price limits of; however, the purchase price of any residence financed through such a loan may not exceed 90 percent of the median sales price for single-family homes in the county where the borrower’s residence is to be located, as mandated by federal law for tax-exempt single-family bond programs.~~

Section 3. Effective upon this act becoming a law and operating retroactively to the 2013 tax roll, section 196.1978, Florida Statutes, is amended to read:

196.1978 Affordable housing property exemption.—Property used to provide affordable housing to serving eligible persons as defined by s. ~~159.603~~ 159.603(7) and natural persons or families meeting the extremely-low-income, very-low-income, low-income, or moderate-income limits specified in s. 420.0004, which ~~property~~ is owned entirely by a nonprofit entity that is a corporation not for profit, qualified as charitable under s. 501(c)(3) of the Internal Revenue Code and in compliance with Rev. Proc. 96-32, 1996-1 C.B. 717, ~~is or a Florida-based limited partnership, the sole general partner of which is a corporation not for profit which is qualified as charitable under s. 501(c)(3) of the Internal Revenue Code and which complies with Rev. Proc. 96-32, 1996-1 C.B. 717,~~ shall be considered property owned by an exempt

entity and used for a charitable purpose, and those portions of the affordable housing property ~~that~~ which provide housing to natural persons or families classified as extremely low income, very low income, low income, or moderate income under s. 420.0004 ~~are~~ shall be exempt from ad valorem taxation to the extent authorized ~~under~~ in s. 196.196. All property identified in this section ~~must~~ shall comply with the criteria ~~provided under s. 196.195~~ for determining determination of exempt status and to be applied by property appraisers on an annual basis ~~as defined in s. 196.195~~. The Legislature intends that any property owned by a limited liability company ~~or limited partnership~~ which is disregarded as an entity for federal income tax purposes pursuant to Treasury Regulation 301.7701-3(b)(1)(ii) ~~shall be~~ shall be treated as owned by its sole member ~~or sole general partner~~.

Section 4. Paragraph (h) of subsection (22) and subsection (48) of section 420.507, Florida Statutes, are amended, and subsection (49) is added to that 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:

(22) To develop and administer the State Apartment Incentive Loan Program. In developing and administering that program, the corporation may:

(h) Establish, by rule, the procedure for ~~evaluating, scoring, and competitively evaluating and selecting ranking~~ evaluating and selecting ranking all applications for funding based on the criteria set forth in s. 420.5087(6)(c),<sup>5</sup> determining actual loan amounts,<sup>5</sup> making and servicing loans,<sup>5</sup> and exercising the powers authorized in this subsection.

(48) ~~To award use up to 10 percent of its annual allocation of low-income housing tax credits, nontaxable revenue bonds, and State Apartment Incentive Loan Program funds appropriated by the Legislature and available to allocate by request for proposals or other competitive solicitation. The corporation shall reserve up to 5 percent of each allocation funding 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 in communities throughout the state as determined by the corporation on an annual basis. The corporation shall reserve an additional 5 percent of each allocation for affordable housing projects that target persons who have a disabling condition, as defined in s. 420.0004, and their families. These allocations must prioritize projects or initiatives piloting or demonstrating cost-effective best practices that meet the housing needs and preferences of such persons. Any tax credits or funds not allocated because of a lack of eligible projects targeting persons who have a disabling condition shall be distributed by the corporation for high-priority housing projects.~~

(49) To adopt rules prescribing a priority to fund affordable housing projects in the Florida Keys Area of Critical State Concern and the City of Key West Area of Critical State Concern where, due to challenging environmental, land use, transportation, workforce, and economic factors, it is extremely difficult to successfully finance, develop, and construct affordable housing.

Section 5. Paragraphs (c) and (f) of subsection (6) of section 420.5087, Florida Statutes, are 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.

(6) On all state apartment incentive loans, except loans made to housing communities for the elderly to provide for lifesafety, building preservation, health, sanitation, or security-related repairs or improvements, the following provisions shall apply:

(c) ~~The corporation shall provide by rule for the establishment of a review committee composed of the department and corporation staff and shall establish by rule a scoring system for the~~ competitive evaluation and selection ~~competitive ranking~~ of applications submitted in this program, including, but not limited to, the following criteria:

1. Tenant income and demographic targeting objectives of the corporation.

2. Targeting objectives of the corporation which will ensure an equitable distribution of loans between rural and urban areas.

3. Sponsor's agreement to reserve the units for persons or families who have incomes below 50 percent of the state or local median income, whichever is higher, for a time period that exceeds ~~to exceed~~ the minimum required by federal law or the ~~provisions of~~ this part.

4. Sponsor's agreement to reserve more than:

a. Twenty percent of the units in the project for persons or families who have incomes that do not exceed 50 percent of the state or local median income, whichever is higher; or

b. Forty percent of the units in the project for persons or families who have incomes that do not exceed 60 percent of the state or local median income, whichever is higher, without requiring a greater amount of the loans as provided in this section.

5. Provision for tenant counseling.

6. Sponsor’s agreement to accept rental assistance certificates or vouchers as payment for rent.

7. Projects requiring the least amount of a state apartment incentive loan compared to overall project cost, except that the share of the loan attributable to units serving extremely-low-income persons must ~~shall~~ be excluded from this requirement.

8. Local government contributions and local government comprehensive planning and activities that promote affordable housing.

9. Project feasibility.

10. Economic viability of the project.

11. Commitment of first mortgage financing.

12. Sponsor’s prior experience.

13. Sponsor’s ability to proceed with construction.

14. Projects that directly implement or assist welfare-to-work transitioning.

15. Projects that reserve units for extremely-low-income persons.

16. Projects that include green building principles, storm-resistant construction, or other elements that reduce long-term costs relating to maintenance, utilities, or insurance.

17. Job-creation rate of the developer and general contractor, as provided in s. 420.507(47).

(f) The review committee established by corporation rule pursuant to this subsection shall make recommendations to the board of directors of the corporation regarding program participation under the State Apartment Incentive Loan Program. The corporation board shall make the ~~final ranking~~ and the decisions regarding which applicants shall become program participants based on the scores received in the competitive ~~process ranking~~, further review of applications, and the recommendations of the review committee. The corporation board shall approve or reject applications for loans and shall determine the tentative loan amount available to each applicant selected for participation in the program. The actual loan amount shall be determined pursuant to rule adopted pursuant to s. 420.507(22)(h).

Section 6. Section 420.511, Florida Statutes, is amended to read:

420.511 Strategic business plan; long-range program strategic plan; annual report; audited financial statements.—

(1) The corporation shall develop a strategic business plan for the provision of affordable housing for the state. The plan must be consistent

shall ~~not be inconsistent~~ with the long-range program 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 in order, to increase individual access to housing and stimulate private production of affordable housing.

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

(e) 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.~~

(2) The corporation, in coordination equal partnership with the department, shall ~~develop annually~~ develop a long-range program strategic plan for the provision of affordable housing in this state as Florida as part of the department's ~~agency strategic plan~~ required pursuant to chapter 186. In part, the plan must ~~shall~~ include provisions that maximize the abilities of the corporation ~~and the department~~ to implement the state housing strategy established under s. 420.0003, to respond to federal housing initiatives, and to develop programs in a manner that is more responsive to the needs of public and private partners. The plan shall be developed on a schedule consistent with that established by s. 186.021. For purposes of this section act, the executive director or his or her designee shall serve as the corporation's representative to achieve a coordinated and integrated planning relationship with the department.

(3)~~(a)~~ The corporation shall submit to the Governor and the presiding officers of each house of the Legislature, within 6 2 months after the end of its fiscal year, a complete and detailed report setting forth the corporation's state and federal program accomplishments using the most recent available data. The report must include, but is not limited to:

(a) The following tenant characteristics in the existing rental units financed through corporation-administered programs:

1. The number of households served, delineated by income, race, ethnicity, and age of the head of household.

2. The number of households served in large, medium, and small counties as described in s. 420.5087(1) and the extent to which geographic distribution has been achieved in accordance with s. 420.5087.

3. The number of farmworker and commercial fishing worker households served.

4. The number of homeless households served.

5. The number of special needs households served.

6. By county, the average rent charged based on unit size.

(b) The number of rental units to which resources have been allocated in the last fiscal year, including income and demographic restrictions.

(c) The estimated average cost of producing units under each rental or homeownership unit financed under each program in the last fiscal year.

(d) By county, the average sales price of homeownership units financed in the last fiscal year.

(e) The number of households served by homeownership programs in the last fiscal year, including the income, race, ethnicity, and age of the homeowner of each household.

(f) The percentage of homeownership loans that are in foreclosure.

(g) The percentage of properties in the corporation’s rental portfolio which have an occupancy rate below 90 percent.

(h) The amount of economic stimulus created by the affordable housing finance programs administered by the corporation for the most recent year available.

(i) For the State Apartment Incentive Loan Program (SAIL), a comprehensive list of all closed loans outstanding at the end of the most recent fiscal year, including, but not limited to, development name, city, county, developer, 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 close of year, status of loan, rate of interest, and interest paid.

(j) For the Florida Affordable Housing Guarantee Program, a list of all guaranteed loans through the close of the most recent fiscal year, including, but not limited to, development name, city, county, developer, total number of units, issuer of the bonds, loan maturity date, participation in the United States Department of Housing and Urban Development Risk-Sharing Program, original guarantee amount, guarantee amount at the close of the fiscal year, status of guaranteed loans, and total outstanding Florida

Housing Finance Corporation Affordable Housing Guarantee Program revenue bonds at the close of the most recent fiscal year.

(k) Any other information the corporation deems appropriate.

1. Its operations and accomplishments;
2. Its receipts and expenditures during its fiscal year in accordance with the categories or classifications established by the corporation for its operating and capital outlay purposes;
3. Its assets and liabilities at the end of its fiscal year and the status of reserve, special, or other funds;
4. 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
5. Information relating to the corporation's activities in implementing the provisions of ss. 420.5087, 420.5088, and 420.5095.

(b) The report 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 homeless persons served under each program.
9. The number of elderly persons served under each program.
10. The extent to which geographic distribution has been achieved in accordance with the provisions of s. 420.5087.
11. The success of the Community Workforce Housing Innovation Pilot Program in meeting the housing needs of eligible areas.
12. Any other information the corporation deems appropriate.



(4) Within 6 months after the end of its fiscal year, the corporation shall submit audited financial statements, prepared in accordance with generally accepted accounting principles, which include all assets, liabilities, revenues, and expenses of the corporation, and a list of all bonds outstanding at the end of its fiscal year. The with the annual report required by this section, a copy of an annual financial audit of its accounts and records and an annual compliance audit must be of its programs conducted by an independent certified public accountant, performed in accordance with generally accepted auditing standards and government auditing standards, and incorporate all reports, including compliance reports, as required by such auditing standards.

(5) The Auditor General shall conduct an operational audit of the accounts and records of the corporation and provide a written report on the audit to the President of the Senate and the Speaker of the House of Representatives by December 1, 2016. Both the corporation’s business plan and annual report must shall recognize the different fiscal periods under which the corporation, the state, the Federal Government, and local governments operate.

Section 7. Paragraph (b) of subsection (4) of section 420.0003, Florida Statutes, is amended to read:

420.0003 State housing strategy.—

(4) IMPLEMENTATION.—The Department of Economic Opportunity and the Florida Housing Finance Corporation in carrying out the strategy articulated herein shall have the following duties:

(b) The long-range program ~~agency strategic~~ plan of the Department of Economic Opportunity must shall include specific goals, objectives, and strategies that implement the housing policies in this section ~~and shall include the strategic plan for housing production prepared by the corporation pursuant to s. 420.511.~~

Section 8. Section 420.0006, Florida Statutes, is amended to read:

420.0006 Authority to contract with corporation; contract requirements; nonperformance.—The executive director of the department shall contract, notwithstanding 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 business plan prepared in accordance with s. 420.511. The contract must provide that if, in the event the corporation fails to comply with any of the a performance measure measures required by s. 420.511, the executive director 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 may ~~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 may ~~is authorized to~~ resolve ~~any~~ differences of opinion with respect to performance under the contract and may request that advances continue in the event of a failure under the contract due to inadequate management. The Chief Financial Officer shall approve the request absent a finding by the Chief Financial Officer that continuing such advances would adversely impact the state; however, ~~in any event~~ the Chief Financial Officer 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 if so long as such contracts are in accordance with the laws of this state.

Section 9. Subsection (1) of section 420.504, Florida Statutes, is amended to read:

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

(1) ~~There is created within the Department of Economic Opportunity A public corporation and a public body corporate and politic, to be known as the "Florida Housing Finance Corporation" is created within the Department of Economic Opportunity.~~ 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 this state 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 Economic Opportunity in which it is placed. The executive function of state government to be performed by the executive director of the Department of Economic Opportunity in the conduct of the business of the Florida Housing Finance Corporation must be performed pursuant to a 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 must ~~shall~~ include the performance standards for the provision of affordable housing in this state Florida established in the strategic business plan described in s. 420.511.

Section 10. Subsection (1) of section 420.506, Florida Statutes, is amended to read:

420.506 Executive director; agents and employees; inspector general.—

(1) The appointment and removal of an executive director shall be by the executive director of the Department of Economic Opportunity, with the advice and consent of the corporation's board of directors. The executive

director shall employ legal and technical experts and such other agents and employees, permanent and temporary, as the corporation may require, and shall communicate with and provide information to the Legislature with respect to the corporation's activities. ~~The board is authorized,~~ Notwithstanding ~~the provisions of s. 216.262,~~ the board may to develop and implement rules regarding the employment of employees of the corporation and service providers, including legal counsel. ~~The board of directors of the corporation~~ is entitled to establish travel procedures and guidelines for employees of the corporation, subject to s. 112.061(6) and (7). The executive director's office and the corporation's files and records must be located in Leon County.

Section 11. Section 420.5091, Florida Statutes, is repealed.

Section 12. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2013.

Approved by the Governor May 30, 2013.

Filed in Office Secretary of State May 30, 2013.