

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAAC 10-03 Sunset Review, Florida Housing Finance Corporation

SPONSOR(S): Government Accountability Act Council

TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Government Accountability Act Council		Zeiler	Mahler
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

The Government Accountability Act requires each agency and related advisory councils to be reviewed by the Legislature according to a prescribed ten-year schedule. If the Legislature does not take action, the agency will continue to be subject to an annual sunset review each year until the Legislature enacts legislation that continues, modifies, or terminates the agency. The Department of Community Affairs (DCA) is scheduled to be reviewed by July 1, 2010 and included in this review is the Florida Housing Finance Corporation (FHFC).

PCB GAAC 10-03 (bill) makes a number of changes based upon the review and recommendations that occurred during the sunset review process. The bill:

- Reenacts s. Part V of Chapter 420, F.S., relating to the establishment and governance of Florida Housing Finance Corporation.
- Provides for the appointment, duties and responsibilities of Inspector General of the FHFC.
- Eliminate the DCA inspector general's role as FHFC inspector general.
- Authorizes the Secretary of DCA to designate a senior-level agency employee to serve on the board of directors (board) of the Florida Housing Finance Corporation.

The bill has no significant fiscal impact on state government or FHFC relating to inspector general provisions of the bill.

The bill has an effective date of July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Overview

Sections 11.901-11.920, F.S., the "Florida Government Accountability Act," creates an agency sunset review process to determine if a public need exists for the continuation of a state agency, its advisory committees, or its programs. The act requires each agency and related advisory councils to be reviewed by the Legislature according to a prescribed ten-year schedule. If the Legislature does not take action before the review date to reenact the agency or its advisory committees, the agency will continue to be subject to an annual sunset review until the Legislature enacts legislation relating to the agency's abolition, continuation, or reorganization.

Sunset Review Process

The act requires the appointment of a Joint Legislative Sunset Committee to oversee the review process, obtain public input, and make recommendations to abolish, continue, or reorganize the agency under review.

Two reports are required prior to an agency's review date:

- No later than two years preceding the year in which an agency and its advisory committees are scheduled to be reviewed, the agency must provide the Legislature with a preliminary report detailing its programs and activities. Upon receipt of the agency's report, the sunset review committees of the Senate and House of Representatives are required to conduct independent reviews of the agency and its advisory committees. The Office of Program Policy Analysis and Government Accountability (OPPAGA) and the Auditor General are required to assist the Senate and House of Representatives in the review process.
- No later than March 1 of the year in which an agency is scheduled to be reviewed, the sunset committees of the Senate and House of Representatives are required to provide the President of the Senate and Speaker of the House of Representatives with recommendations on the abolition, continuation, or reorganization of each state agency and its advisory committees, and on the need for the performance of the functions of the agency and its advisory committees.

Recommendations

The Joint Legislative Sunset Committee, Senate Committee on Community Affairs and OPPAGA have prepared various reports and memorandums regarding the sunset review of DCA and the FHFC. Their recommendations related to the FHFC are summarized in bullet format below with earliest date first.

OPPAGA–January 2009 (FHFC - Overview)

- No recommendations.

OPPAGA–January 2008 (FHFC – Advisory Committees Assessment)

- Continue the Affordable Housing Study Commission

Senate Committee on Committee Affairs–October 2009

- The professional staff of the Senate’s Community Affairs Committee recommended retaining the FHFC.

PCB GAAC 10-03

Florida Housing Finance Corporation¹

Current Situation

FHFC is a public corporation of the State of Florida and is the state’s housing finance agency. FHFC is a financial institution which administers federal and state resources to finance the development of affordable homeowner and rental housing and to assist homebuyers. When the Legislature created FHFC’s precursor, Florida Housing Finance Agency, in 1980, the agency was an arm of the DCA and its purpose as outlined in Section 420.502, F.S., was to:

- Better access federal housing initiatives;
- Stabilize the flow of funds for affordable housing;
- Promote affordable housing; and
- Boost Florida’s construction industry.

As a result of revisions made by the 1997 Legislature, on January 1, 1998, FHFC was created as a public-private entity to reduce bureaucracy, streamline many administrative processes and operate more effectively within the real estate and financial markets. Two changes were particularly important in this regard: accelerated disbursement of trust fund dollars to the private sector and local governments, and elimination of duplicative services in the issuance of bonds. Funds disbursed by FHFC in loan closings for developments and homeowner mortgages, which took up to six weeks before FHFC was created as a public corporation, were processed through both DCA and the Comptroller. The lengthy process was costly to private sector partners, created construction delays and slowed down implementation of local housing programs. The 1997 legislative changes authorized FHFC to disburse funds directly, typically within five business days. The bond issuance process also was streamlined by authorizing FHFC to issue bonds directly. Prior to this change, the Division of Bond Finance issued these bonds, requiring both agencies to provide staff for this purpose. Note that the statute still requires the State Board of Administration to approve a fiscal determination for each bond issue carried out by FHFC.

FHFC is also subject to the Government in the Sunshine Law (Chapter 286, F.S.), the Public Records Act (Chapter 119, F.S.), the Administrative Procedure Act (Chapter 120, F.S.), and audits by the Chief Financial Officer for the State of Florida and the State Auditor General (Chapter 216, F.S.).

FHFC is not a department of the executive branch of state government within the scope and meaning of Section 6, Article IV of the State Constitution, but is an instrumentality of the State. FHFC is functionally related to DCA; sections 420.0006 and 420.504, F.S., require FHFC and DCA to sign a

¹ Florida Housing Finance Corporation Overview prepared for the Joint Sunset Review Committee (October 2008)

performance contract outlining the conduct of business by the Corporation. FHFC is not governed by the provisions of Chapters 607(Corporation) or 617(Corporation Not For Profit), F.S., but by the provisions of Part V, Chapter 420, F.S.

Section 420.507, F.S., assigns responsibilities to FHFC, which are summarized here:

- To carry out analyses of housing needs within the state and ways of meeting those needs;
- To participate in federal housing assistance and federal community development, insurance, and guarantee programs;
- To develop and administer the state rental and homeownership programs as outlined by statute;
- To designate and administer private activity tax exempt bond allocation received by FHFC pursuant to Part VI of Chapter 159 between the single family and multifamily programs;
- To set standards for and monitor compliance of residential housing financed by FHFC; and
- To conduct demonstration programs and projects which further the statutory purposes of FHFC.

FHFC is governed by a nine-member board of directors appointed by the Governor and subject to Senate confirmation, with the following interests represented pursuant to Section 420.504 (3), F.S.

- Residential home builder;
- Commercial builder;
- Banker or mortgage banker;
- Building labor representative;
- Low income advocate;
- Former local government elected official;
- Two Florida citizens who are none of the above; and
- The Secretary of the Florida Department of Community Affairs (ex officio).

Board members are appointed to four year terms. The Board meets regularly throughout the year. Day-to-day operations are managed by FHFC's executive director (director), who is appointed by the DCA Secretary with the advice and consent of the Board, and a staff of approximately 130.

As a financial institution, FHFC works with private lenders and investors, mortgage and bond insurers, Federal Home Loan Banks, liquidity facility providers, government sponsored entities (GSEs), for profit and nonprofit developers and property managers, local governments, public housing authorities and local housing finance authorities to finance affordable housing. In developing and implementing program priorities, the Board and staff must balance financial and market forces with our mission of serving Floridians who need decent housing. With over 180,000 rental units currently financed and on the ground or in the construction pipeline, FHFC has nearly 6.4 billion in assets. These assets are primarily in the form of loans receivable and investments, and are restricted by various bond indentures or by statute. Liabilities are comprised mainly of bonds and interest payable.

Effects of the bill

The bill reenacts Part V, Chapter 420, F.S., The governing provisions of the FHFC.

Agency Inspector General

Current situation

Section 20.055 (2), F.S., establishes the Office of the Inspector General (OIG) in each state agency to promote accountability, integrity, and efficiency in government. Each Inspector General (IG) is appointed, supervised, and removed by their respective agency head. The major responsibilities of the OIG include investigations, audits, and reviews of state agency programs and activities.

Section 20.055(5), F.S., established the following minimum qualification for an agency inspector:

- A bachelor's degree from an accredited college or university with a major in accounting, or with a major in business which includes five courses in accounting, and 5 years of experience as an internal auditor or independent postauditor, electronic data processing auditor, accountant, or any combination thereof; or

- A master's degree in accounting, business administration, or public administration from an accredited college or university and 4 years of experience as required above; or
- A certified public accountant license issued pursuant to chapter 473, F.S., or a certified internal audit certificate issued by the Institute of Internal Auditors or earned by examination, and 4 years of experience as required above.

Section 20.055 (6), F.S., states that investigations are designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government. Accordingly, the following duties are performed by OIG:

- Receive complaints and coordinate all activities of the agency as required by the Whistle-blower's Act pursuant to ss. 112.3187-112.31895, F.S.
- Receive and consider the complaints which do not meet the criteria for an investigation under the Whistle-blower's Act and conduct, supervise, or coordinate such inquiries, investigations, or reviews as the IG deems appropriate.
- Report expeditiously to the Department of Law Enforcement or other law enforcement agencies, as appropriate, whenever the IG has reasonable grounds to believe there has been a violation of criminal law.
- Conduct investigations and other inquiries free of actual or perceived impairment to the independence of the IG or the IG's office. This shall include freedom from any interference with investigations and timely access to records and other sources of information.
- Submit in a timely fashion final reports on investigations conducted by the IG to the agency head, except for whistle-blower's investigations, which shall be conducted and reported pursuant to s. 112.3189, F.S.

Audits are independent appraisals designed to examine and evaluate agency programs and activities. An inherent objective when performing audits is to review and evaluate internal controls necessary to ensure fiscal accountability. Audits must be conducted in accordance with the current Standards for the Professional Practice of Internal Auditing and subsequent Internal Auditing Standards or Statements on Internal Auditing Standards published by the Institute of Internal Auditors, Inc., or, where appropriate, in accordance with generally accepted governmental auditing standards.

Final reports are submitted to the agency head and the Auditor General, whose office is directed to give official recognition to their findings and recommendations as part of its post-audit responsibilities.

Section 20.055(7), F.S., requires each inspector general to prepare an annual report summarizing the annual activities of the OIG. The report is due September 30, following the preceding fiscal year.

Effects of the bill

The bill amends s. 20.055(1)(a), F.S., and s. 20.055(1)(b), F.S., respectively adding the "Florida Housing Finance Corporation" to the definition of "State Agency" and the "Board of Directors of the Florida Housing Finance Corporation" to the definition of "Agency Head" for the purposes of s. 20.055, F.S., thereby conferring the duties and responsibilities described above on the IG position created below.

The bill amends s. 20.055(7), F.S., to adjust the reporting deadline for the IG's annual report to reflect the reporting period (calendar year) of the FHFC.

The bill amends s. 420.506, F.S., creating an IG position for the FHFC and provides for the appointment and removal of the IG by the director with the advice and consent of the board. The FHFC's IG will perform the duties of an agency inspector general as provided in s. 20.055, F.S., and will administratively report to the director. The FHFC's Inspector general will be required to meet the minimal qualification established by s. 20.055(4), F.S., and the board may establish additional qualifications.

The bill amends s.420.006, F.S., removing an obsolete cross-reference (s.216.0166, F.S.) and removes DCA inspector general's responsibilities to serve as FHFC's inspector general.

Board of Directors

Current situation

FHFC is governed by a nine-member board of directors appointed by the Governor and subject to Senate confirmation, with the following interests represented pursuant to Section 420.504 (3), F.S.:

- Residential home builder;
- Commercial builder;
- Banker or mortgage banker;
- Building labor representative;
- Low income advocate;
- Former local government elected official;
- Two Florida citizens who are none of the above; and
- The Secretary of the Florida Department of Community Affairs (ex officio).

Effects of the bill

The bill amends s. 420.504(3), F.S., and permits the Secretary of the Florida Department of Community Affairs to designate a senior-level agency employee to serve as the DCA's ex officio board member.

B. SECTION DIRECTORY:

Section 1. Reenacts Part V of chapter 420, F.S., the "Florida Housing Finance Corporation Act," consisting of sections 420.501, 420.502, 420.503, 420.504, 420.505, 420.506, 420.5061, 420.507, 420.508, 420.5087, 420.5088, 420.5089, 420.509, 420.5091, 420.5092, 420.5093, 420.5095, 420.5099, 420.51, 420.511, 420.512, 420.513, 420.514, 420.515, 420.516, 420.517, 420.521, 420.522, 420.523, 420.524, 420.525, 420.526, 420.527, 420.528, 420.529, 420.5295, 420.531, and 420.55, F.S., relating to the creation, purposes, powers and responsibilities of the FHFC.

Section 2. Reenacts and amends s. 420.506, F.S., relating to the FHFC and FHFC's Inspector General.

Section 3. Reenacts and amends. 420.0006, F.S., relating to appointment of an IG of the FHFC.

Section 4. Amends paragraphs (a) and (b) of subsection (1) and subsection (7) of section 20.055, F.S., relating to Agency Inspector General.

Section 5. Amends, as reenacted, subsection (3) of s. 420.504, F.S., relating to the DCA's IG and an obsolete cross-reference (s.216.0166, F.S.).

Section 6. Provides a July 1, 2010 effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None, see Fiscal Comments below.

2. Expenditures:

None, see Fiscal Comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Florida Housing Finance Corporation currently employs an inspector general and internal audit staff. The bill contemplates no additional fiscal resources will required to meet the requirements of the bill.

While fiscally insignificant, the transfer of responsibilities from the DCA inspector general to the FHFC inspector general will shift audit related workloads. Currently, FHFC reimburses DCA for these functions performed by the DCA inspector general. Part of this reimbursement will no longer be paid to DCA.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable, the bill does not appear to affect municipal or county governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No rulemaking authority is granted by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES