

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 545 CS Affordable Housing  
**SPONSOR(S):** Lopez-Cantera and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 334

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Economic Development, Trade &amp; Banking Committee</u>	<u>15 Y, 0 N, w/CS</u>	<u>Carlson</u>	<u>Carlson</u>
2) <u>Local Government Council</u>	<u>7 Y, 0 N</u>	<u>Nelson</u>	<u>Hamby</u>
3) <u>Transportation &amp; Economic Development Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
4) <u>Commerce Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

This bill authorizes Florida's public housing authorities to organize for the purpose of creating for-profit and not-for-profit business entities which can enter into partnerships, joint ventures and other business arrangements for the development of multifamily and single family residential projects. The bill allows such projects to include nonresidential uses, and serve individuals and families with income up to 150 percent of the applicable area median income in certain circumstances.

This bill does not appear to have a direct fiscal impact on the state or local governments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

**Provide Limited Government** – The bill will expand the role of certain public agencies (i.e., housing authorities) by authorizing them to create for-profit and not-for-profit entities to develop housing projects. The bill also removes a legislative finding that provides that the shortage of low income housing can't be relieved through the operation of private enterprise, and that the construction of such projects therefore can't be competitive with private enterprise.

**Empower Families** – The bill may increase the availability of affordable public housing for families.

### B. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### **Federal Public Housing Programs**

Federal public housing programs were created to provide decent and safe housing for eligible low-income families, the elderly, and persons with disabilities. The U.S. Department of Housing and Urban Development (HUD) administers federal aid to local public housing authorities that develop and manage housing for low-income residents. A housing authority typically is a municipal or county agency created under state law.

While HUD offers a range of affordable housing initiatives, the department's public housing programs have focused on assisting low and very low income households. Historically, HUD provides funding to local agencies to operate and repair public housing units through its Operating Fund and Capital Fund programs. The Operating Fund program provides annual subsidies to housing agencies to make up the difference between the amount they collect in rent and the cost of operating housing units. The Capital Fund program provides grants to housing authorities for the major repair and modernization of housing units. Under HUD's tenant-based voucher (Section 8) program, eligible households select their own units in the private housing market and receive subsidies to cover part of the rent. Housing agencies that participate in this program enter into contracts with HUD, and receive funds to provide rent subsidies to the owners of private housing on behalf of the assisted households.

##### **Public Housing Authorities in Florida**

Florida's public housing authorities serve almost 300,000 low-income Floridians through public housing units and vouchers.<sup>1</sup> These individuals represent more than 115,000 households. Nearly 60 percent of the 41,560 state's public housing units are occupied by households in the extremely-low income group (annual incomes below the federal poverty level).<sup>2</sup> Florida's housing authorities currently provide vouchers to approximately 87,000 households. More than 55,000 households are on waiting lists for residence in public housing units, and more than 80,000 households are on voucher waiting lists. Total expenditures by housing authorities in Florida were more than \$819 million during federal fiscal year 2003.<sup>3</sup>

Chapter 421, F.S., governs the establishment and operation of public housing authorities in Florida. This law creates a public body known as the "housing authority" in each city and county in the state.<sup>4</sup>

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<sup>1</sup> *Public Housing Authorities in Florida: An Analysis of Selected Issues*, Shimberg Center for Affordable Housing, University of Florida, February 2004.

<sup>2</sup> For 2005, the federal poverty threshold for a family of four is \$19,350. U.S. Department of Health and Human Services.

<sup>3</sup> Shimberg, op.cit.

<sup>4</sup> See, ss. 421.04(1) and 421.27(1), F.S.

These entities are authorized to transact business and exercise powers once the local governing body declares by resolution that there is a need for a housing authority.<sup>5</sup> Regional housing authorities also may be created by two or more contiguous counties.<sup>6</sup> Section 421.02, F.S., provides a legislative declaration of necessity for public housing. Specifically, this section states: “Slum areas in the state cannot be cleared, nor can the shortage of safe and sanitary dwellings for persons of low income be relieved, through the operation of private enterprise, and that the construction of housing projects for persons of low income, as herein defined, would therefore not be competitive with private enterprise.”

Pursuant to s. 421.08, F.S., housing authorities are authorized to engage in a range of housing-related activities. For example, housing authorities are authorized to acquire, lease and operate housing projects, and to provide for the construction, reconstruction, improvement, alteration or repair of housing projects. Housing authorities also are authorized to lease or rent accommodations, lands, buildings, structures or facilities contained in any housing project, and to establish and revise the rents or charges. Housing authorities additionally may acquire real property by eminent domain, and may sell or lease any real or personal property or any interest therein.

Section 421.54, F.S., establishes certain restrictions on housing authorities located in Orange and Seminole counties. This section provides that prior to the construction of new housing facilities in these counties, housing authorities subject to this section must obtain the approval of the governing body of the area where the housing project is to be located at a public hearing. At this hearing, the names of the real parties in interest, directly or indirectly, in the proposed project must be disclosed. If the housing project is not approved by a majority vote of the governing body, the housing authority may request the governing body to order a referendum election in the precinct where the proposed housing project is to be located.

### **Changing HUD Policies**

In recent years, HUD has encouraged housing authorities to adopt more entrepreneurial and innovative approaches to the delivery of low-income housing.<sup>7</sup> For example, through the HOPE VI program, first funded in 1993, and similar initiatives, HUD has endorsed a mixed-finance approach to the replacement of public housing developments. This approach emphasizes the formation of new public-private partnerships that leverage funds into the public housing process to create sustainable, mixed-income communities. These initiatives use a combination of private financing and public housing development funds to create public housing units owned by an entity other than a housing authority. The public housing development funds may be provided to a third-party (non-housing authority entity) so that it can develop and own the resulting public housing units.

Currently, Florida’s housing authorities are not specifically authorized to create a for-profit or not-for-profit corporation, limited liability company, or similar entity to develop and operate residential homes or nonresidential projects. Housing authorities also are prohibited from operating housing projects on a for-profit basis or as a source of revenue for local governments.

According a 2004 report issued by the Shimberg Center for Affordable Housing, nine Florida housing authorities have received 13 HOPE VI grants since 1993. These grants totaled nearly \$250 million. Recipient housing authorities have leveraged these grants with other public and private funds to bring the total investment in revitalization of distressed public housing and surrounding neighborhoods to more than \$657 million under this program.<sup>8</sup>

### **Effect of Proposed Changes**

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<sup>5</sup> Currently, approximately 107 public housing authorities exist in Florida. Id. According to the Department of Community Affairs, 92 of these housing authorities are special districts. See, <http://floridaspecialdistricts.org/Official> List/report

<sup>6</sup> See, s. 421.28(1), F.S.

<sup>7</sup> Members of Florida’s affordable housing delivery system have reported that the federal government has not provided housing authorities with sufficient funds to repair public housing units and that, over time, our state’s public housing stock has diminished.

<sup>8</sup> *Public Housing Authorities in Florida: An Analysis of Selected Issues*, Shimberg Center for Affordable Housing, University of Florida, February 2004.

## Legislative Intent

The bill revises the legislative finding and declaration of necessity regarding public housing to eliminate antiquated language, and provides that the public housing problem cannot be relieved solely through private enterprise. It also removes language which states that the construction of housing projects for persons of low income would not be competitive with private enterprise.

## Formation of Business Entities

The bill authorizes a housing authority to organize for-profit and not-for-profit corporations, limited liability companies and similar business entities in which the housing authority may have an ownership interest or management role in order to develop, acquire, lease, construct, rehabilitate, manage or operate multifamily or single family residential projects. Any such entities must be organized pursuant to all applicable state laws.

The bill also allows the housing authority-affiliated corporations, limited liability companies or other business entities to join partnerships, joint ventures, limited liability companies or otherwise to engage with business entities to develop, acquire, lease, construct, rehabilitate, manage or operate multifamily or single family residential projects.

## Use and Eligibility for Funds

The bill authorizes the residential projects to include nonresidential<sup>9</sup> uses and to utilize public and private funds to serve individuals and families: (1) who meet the applicable income requirements of the state and federal programs involved; (2) whose income does not exceed 150 percent of the applicable area median income<sup>10</sup>; and (3) who, in the determination of the housing authority, lack sufficient income or assets to enable them to purchase or rent a decent, safe and sanitary dwelling. The following chart provides comparison figures for 30, 50, 80 and 120 percent of area median incomes for various Florida locations.

## Examples of 2003 Area Median Incomes

	Family Area Median Income (AMI)	Adjusted for Family Size of Four			
		Extremely Low Income (30% of AMI)	Very Low Income (50% of AMI)	Low Income (80% of AMI)	Moderate Income (120% of AMI)
Calhoun County	\$31,800	\$12,400	\$20,700	\$33,100	\$49,680
Fort Myers-Cape Coral MSA (Lee)	\$51,700	\$15,650	\$26,050	\$41,700	\$62,520
Fort Walton Beach MSA (Okaloosa)	\$52,700	\$15,800	\$26,350	\$42,150	\$63,240
Gainesville MSA (Alachua)	\$50,600	\$15,200	\$25,300	\$40,500	\$60,720
Glades County	\$38,000	\$12,400	\$20,700	\$33,100	\$49,680
Jacksonville MSA (Clay, Duval, Nassau, Saint Johns)	\$54,900	\$16,700	\$27,800	\$44,500	\$66,720
Monroe County	\$56,500	\$16,950	\$28,250	\$45,200	\$67,800
Ocala MSA (Marion)	\$40,600	\$12,500	\$20,800	\$33,300	\$49,920

<sup>9</sup> Nonresidential uses could include such features as community centers and playgrounds, or the ability in a mixed use development to lease property to a small business owner.

<sup>10</sup> Housing authority representatives have indicated that service to higher income groups would, in effect, allow a housing authority to "cross-subsidize" its lower income residents.

Orlando MSA (Lake, Orange, Osceola, Seminole)	\$52,700	\$16,400	\$27,350	\$43,750	\$65,640
Pensacola MSA (Escambia, Santa Rosa)	\$47,400	\$14,200	\$23,700	\$37,900	\$56,880
Sarasota-Bradenton MSA (Manatee, Sarasota)	\$52,600	\$16,000	\$26,700	\$42,700	\$64,080
Tallahassee MSA (Gadsden, Leon)	\$54,500	\$17,150	\$28,600	\$45,750	\$68,640
Tampa-St. Petersburg-Clearwater MSA (Hernando, Hillsborough, Pasco, Pinellas)	\$49,700	\$15,150	\$25,250	\$40,400	\$60,600
West Palm Beach-Boca Raton MSA (Palm Beach)	\$60,800	\$18,850	\$31,400	\$50,250	\$75,360

“MSA” means metropolitan statistical area. For purposes of HUD income limit calculations, median family income estimates are linked to a family size of four persons. For instance, the 50 percent of median, very low-income limit for a family of four is usually set at 50 percent of the median family income for all families. HUD then adjusts this figure to assign higher income limits for larger families and lower income limits for smaller families. Median family income figures might also be adjusted for a variety of reasons including: historical exceptions, state non-metropolitan median family income levels, etc.

### **Ratification of Existing Business Activities**

The bill also ratifies and declares legal the existence and acts of any existing for-profit or not-for-profit entity that is properly registered pursuant to all applicable state laws or public-private partnership created by a housing authority prior to July 1, 2005, the effective date of the bill. See, the “Drafting Issues and Other Comments” section for analysis of this issue.

### **Revision of Per Diem and Travel Requirements**

The bill also provides housing authority governing boards with authority, notwithstanding s. 112.061, F.S., relating to per diem and travel expenses of public officers, employees and authorized persons, to adopt policies for per diem, travel and other expenses consistent with federal guidelines.<sup>11</sup> This will remove housing authority governing boards and their employees and other authorized persons from the limitations provided by s. 112.061, F.S. While many housing authorities may have this authority pursuant to general law, this provision would extend that authority to housing authorities that do not come under following:

#### ***Applicability of s. 112.061, F.S., to Local Government Entities***

In 2003, the Legislature enacted ch. 2003-125, L.O.F., that amended s. 112.061, F.S., to permit the following entities to establish travel reimbursement rates that exceed the maximum rates specified in s. 112.061(6)(a), F.S., for per diem, in s. 112.061(6)(b), F.S., for meals, and in s. 112.061(7)(d)1., F.S., for mileage allowances:

- the governing body of a county by ordinance or resolution;
- a county constitutional officer by written policy;
- the governing body of a district school board by rule; or
- the governing body of a special district by resolution.

<sup>11</sup> A housing authority representative has indicated that housing authorities operated under federal travel reimbursement guidelines until this practice was reviewed by Florida’s Attorney General. See, AGO 99-33. Federal guidelines provide substantially higher travel reimbursement. For example, the federal per diem rate for most of the country is \$91 compared to a rate of \$50 provided by Florida government; federal mileage reimbursement is \$0.405 cents a mile, while Florida reimburses its travelers at a rate of \$0.29.

Any such rates established by the specified local government entities are required to apply uniformly to all travel conducted by the entity. Further, these entities remain subject to all other provisions of s. 112.061, F.S.<sup>12</sup>

Chapter 2003-125, L.O.F., also amended s. 166.021(10), F.S. to permit a municipality or agency<sup>13</sup> thereof to exempt itself from all of the provisions of s. 112.061, F.S., when it creates its own per diem and travel expense policy for its travelers. Municipalities and agencies thereof that do not create such a policy remain subject to s. 112.061, F.S.

### **Restriction of Not-for-Profit Limitation**

The bill specifies that the not-for-profit status of a housing authority does not prohibit or restrict it from creating a for-profit business entity which may enter into partnerships, joint partnerships or other business arrangements with for-profit companies to provide residential housing. While the law continues to prohibit a housing authority from constructing or operating a public housing project for profit or as a source of revenue to a city, it appears that the bill will allow a housing authority, through its affiliated business entity, to operate a housing project on a for-profit basis.

### **Public Housing Authority Liability**

Current law provides that liabilities incurred a housing authority arising from the operation of its housing projects may not be payable from any funds other than the rents, fees or revenues of such projects, and any grants or subsidies paid by the federal government. This bill adds language which allows such liabilities to be paid by other funds which are lawfully pledged by the authority's governing board. This language will allow an authority to provide collateral, if it so chooses, while still affording an authority protection against the loss of its housing units.

### **Elimination of Notice and Vote for Orange and Seminole Counties**

The bill repeals the notice and local governing body approval requirements applicable to new public housing projects in Orange and Seminole counties. This provision was added to Florida law in 1969<sup>14</sup>, and its repeal would remove limitations to the activities of housing authorities in those counties which are not applicable on a state-wide basis.

#### **C. SECTION DIRECTORY:**

Section 1. Amends s. 421.02, F.S., relating to the finding and declaration of necessity for public housing.

Section 2. Amends s. 421.08, F.S., relating to the powers of a public housing authority.

Section 3. Amends s. 421.09, F.S., relating to the not-for-profit operation of a public housing authority.

Section 4. Amends s. 421.23, F.S., relating to the liabilities of a public housing authority.

Section 5. Repeals s. 421.54, F.S., relating to a limitation on new housing projects without a vote of approval by the local governing authority.

Section 6. Provides an effective date of July 1, 2005.

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<sup>12</sup> Section 112.061(14), F.S.

<sup>13</sup> The term "agency" is not defined. Thus, the term may be read broadly to include any entity that has an agency relationship with a municipality. The factors required to establish an agency relationship are: (1) acknowledgment by the principal that the agent will act for him; (2) the agent's acceptance of the undertaking; and (3) control by the principal over the actions of the agent. Goldschmidt v. Holman, 571 So.2d 422 (Fla. 1990).

<sup>14</sup> See, ch. 69-303, L.O.F.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill appears not to have any impact on state government revenues.

#### 2. Expenditures:

The bill appears not to have any impact on state government expenditures.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill appears not to have any impact of local government revenues.

#### 2. Expenditures:

The bill appears not to have any impact of local government expenditures.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may provide additional opportunities for private entities to enter into public-private partnerships with housing authorities for the development of residential projects.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

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

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

#### **For-Profit Operation**

The bill appears to allow a public housing agency, through its affiliated business entity, to operate for-profit with respect to the creation or operation of a public housing project. The bill does not make clear how any profits realized by the affiliated business entity will be used, however. Such profits could be limited to reinvestment in public housing projects, for example.

## Curative Acts

Section 2 (8) of the bill provides that the prior creation of any such business entities by housing authorities together with all previous acts and proceedings are validated, ratified and declared legal in all respects.

As a general rule, the Legislature may ratify, validate or confirm through a curative act anything that it could have authorized initially if the subsequent statute or other measure is itself a proper exercise of legislative power under the State Constitution.<sup>15</sup> The Florida Supreme Court has upheld a variety of curative acts of the Legislature, including curative acts ratifying or validating special assessments, certain tax levies, municipal contracts, county contracts and bond issuances.

However, the court has also invalidated a general law intended to ratify unspecified actions of municipalities and their officers performed under special and local laws.<sup>16</sup> In support of its conclusion, the court stated that “[The statute] is too general to be effective. A curative Act contemplates that the legislature has been advised of the nature of the matters done and performed which it purports to validate, ratify or confirm and any law as general as the aforesaid section which attempts to validate any and all acts and doings of a class of officers or public corporations is too general to be effective as a valid exercise of legislative power.”

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 10, 2005, the Economic Development, Trade and Banking Committee adopted a strike-all amendment to the bill. The amendment:

- clarifies the declaration of necessity to state that the public housing problem cannot be relieved solely through the operation of private enterprise; and
- requires business entities organized by a public housing authority to be organized under all applicable state laws.

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<sup>15</sup> Charlotte Harbor & Ny. Co. v. Welles, 260 U.S. 8 (1922); State v. Sarasota County, 155 So. 2d 543 (Fla. 1963); State v. Haines City, 137 Fla. 616, 188 So. 831 (1939); Dover Drainage Dist. v. Pancoast, 102 Fla. 267, 135 So. 518 (1931); City of Winter Haven v. A. M. Klemm & Son, 132 Fla. 334, 181 So. 153 (1938), reh'g denied, 133 Fla. 525, 182 So. 841 (1938).

<sup>16</sup> Certain Lots Upon Which Taxes are Delinquent v. Town of Monticello, 31 So.2d 905 (Fla. 1947); Sullivan v. Volusia County Canvassing Bd., 679 So.2d 1206 (Fla. 5<sup>th</sup> DCA 1996) (citing *Certain Lots*).