

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 1520
 INTRODUCER: Senator Soto
 SUBJECT: Housing for Low-income Persons
 DATE: March 4, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	Yeatman	CA	Pre-meeting
2.			FT	
3.			FP	

I. Summary:

SB 1520 provides a finding that essential commercial goods and services required for daily living are necessary to residents of housing authorities but are difficult to access. The bill grants a housing authority the ability to develop and construct commercial projects, which would provide these types of goods and services, including renewable energy. Revenue received by a housing authority from a commercial project must be used to upgrade and improve the housing project or to preserve and rehabilitate other housing authority properties. A commercial project so established would be exempt from property taxation and all taxes and special assessments of the state or any city, town, county, or political subdivision of the state.

Additionally, the bill provides that:

- Commissioners of public housing authorities:
 - Are banned from acquiring interests in any commercial project related to the housing authority; and
 - Are not subject to certain prohibitions on extra compensation;
- Consolidated housing authority or authorities:
 - Replaces the term “regional housing authority”;
 - May be created by a merger of existing authorities under specified conditions;
 - May appoint up to seven commissioners, in accordance with the consolidation plan of the consolidated housing authority;
 - May appoint an extra commissioner if their area of operation increases; and
 - May remove commissioners; and
- Housing authorities are exempt from providing the Department of Financial Services with a biennial audit.

II. Present Situation:

Public Housing Authorities

The state role in housing and urban development is outlined in part I of ch. 421, F.S., (Housing Authorities Law), ch. 422, F.S., (Housing Cooperation Law), and ch. 423, F.S., (Tax Exemption of Housing Authorities).¹ Section 421.02, F.S., finds that there is a shortage of safe or sanitary dwelling accommodations available at rents that persons of low income can afford. To provide such accommodations housing authorities may acquire property to be used for or in connection with housing projects. Public money may only be spent to acquire private property for exclusively public uses and purposes, and the purposes must be determined to be governmental functions of public concern.

City, County, and Regional Housing Authorities

Florida Statutes provide for the creation of special district, city, county and regional housing authorities. Of the 110 public housing authorities in Florida,² 90 are special districts.³

The determination of the need for a city housing authority may be made by the governing body of a city or upon the filing of a petition signed by 25 city residents. The mayor, with the approval of the governing body, appoints no fewer than five and no more than seven persons as commissioners of the authority.⁴ The powers of each authority are vested in the commissioners and action may be taken upon a majority vote of the commissioners. No commissioner or employee of an authority may acquire any interest in any housing project or in any property included or planned to be included in any project, nor in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project.⁵

Section 421.08, F.S., establishes the powers of a housing authority, including:

- The power to acquire, lease, and operate housing projects,
- The power to provide for the construction, reconstruction, improvement, alteration, or repair of any housing project,
- The power to lease or rent any dwellings, houses, accommodations, lands, buildings, structures, or facilities embraced in any housing project, and
- The power to invest any funds held in reserves or sinking funds.

Section 421.08(8)(a), F.S., grants the power to:

organize for the purpose of creating a for-profit or not-for-profit corporation, limited liability company, or other similar business entity . . .

¹ The Department of Economic Opportunity (DEO) is the state agency charged with the responsibility of this state role.

² Florida Housing Data Clearing House, *Public Housing Agency Results*, available at http://flhousingdata.shimberg.ufl.edu/a/public_housing_agency?next=results&submit_submit.x=15&submit_submit.y=13&nid=1 (last visited Apr. 3, 2015).

³ Florida Department of Economic Opportunity, *Official List of Special Districts Online*, (available online at <http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/index.cfm>) (last visited Apr. 3, 2015).

⁴ At least one commissioner must be a resident of a housing project or a person of low income who resides within the housing authority's jurisdiction and is receiving a rent subsidy. See s. 4231.05(1), F.S.

⁵ See s. 421.06, F.S.

to develop, acquire, lease, construct, rehabilitate, manage, or operate multifamily or single-family residential projects. These projects may include nonresidential uses and may use public and private funds to serve individuals or families who meet the applicable income requirements of the state or federal program involved; . . .

Section 421.27, F.S., governs the creation and powers of county housing authorities, which is similar to the creation of city housing authorities.⁶ A county housing authority's area of operation includes all of the county except that portion which lies within the territorial boundaries of any city as defined in the Housing Authorities Law. A regional housing authority may be created by two or more contiguous counties if a regional entity would be a more economically or administratively efficient unit.⁷ The powers of a regional housing authority are analogous to those of a city or county housing authority.

Housing Authorities and Eminent Domain

An authority has the right to acquire by the exercise of the power of eminent domain any real property which it may deem necessary for its purposes.⁸ Property already devoted to a public use may be acquired in like manner, so long as no real property belonging to the city, the county, the state or any political subdivision is acquired without its consent.

Federal Aid for Housing Authorities

Section 421.21, F.S., empowers a housing authority to borrow money or accept grants or other financial assistance from the federal government for housing projects. This section also allows a housing authority to take over or lease or manage any housing project or undertaking constructed or owned by the federal government. In addition, an authority is authorized "to do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in the undertaking, construction, maintenance or operation of any housing project by such authority."⁹

Housing Cooperation Law

Chapter 422, F.S., provides that any state public body, for the purpose of aiding and cooperating in the construction or operation of housing projects may:

- Sell or lease any of its property to a housing authority or the federal government;
- Cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities or any other works, which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with housing projects;
- Furnish, close, pave, install, grade, or plan streets, roads, alleys, or sidewalks;

⁶ In counties, petitions must be signed by 25 county residents and the Governor appoints the commissioners.

⁷ See s. 421.28, F.S. The Governor appoints commissioners pursuant to s. 421.30, F.S.

⁸ Section 421.12, F.S. An authority may exercise the power of eminent domain pursuant to ch. 73 and ch. 74, F.S.

⁹ Section 421.21, F.S.

- Do any and all things, necessary or convenient, to aid and cooperate in the planning, undertaking, construction or operation of housing projects; and
- Purchase or legally invest in any of the debentures of a housing authority.¹⁰

Tax Exemption of Housing Authorities

Chapter 423, F.S., provides property tax exemptions as well as state and local government tax and assessment exemptions for housing authorities. Specifically, s. 423.01(4), F.S., states:

Such housing projects, including all property of a housing authority used for or in connection therewith or appurtenant thereto, are exclusively for public uses and municipal purposes and not for profit, and are governmental functions of state concern. As a matter of legislative determination, it is found and declared that the property and debentures of a housing authority are of such character as may be exempt from taxation.

Section 423.02, F.S., states that

. . . housing projects, including all property of housing authorities used for or in connection therewith or appurtenant thereto, of housing authorities shall be exempt from all taxes and special assessments of the state or any city, town, county, or political subdivision of the state . . .¹¹

Renewable Energy Source Devices

Section 193.624, F.S., prohibits a property appraiser who is determining the assessed value of real property used for residential purposes from considering an increase in the just value of the property attributable to the installation of a renewable energy source device. The statute applies to a renewable energy source device installed on or after January 1, 2013, on new and existing residential real property. The statute defines the term “renewable energy source device” to mean any of the following equipment that collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits:

- Solar energy collectors, photovoltaic modules, and inverters;
- Storage tanks and other storage systems, excluding swimming pools used as storage tanks;
- Rockbeds;
- Thermostats and other control devices;
- Heat exchange devices;
- Pumps and fans;
- Roof ponds;
- Freestanding thermal containers;

¹⁰ See s. 422.04(1), F.S.

¹¹ In lieu of such taxes or special assessments a housing authority may agree to make payments to a local government for services, improvements or facilities furnished by the entity for the benefit of a housing project owned by the housing authority.

- Pipes, ducts, refrigerant handling systems, and other equipment used to interconnect such systems; however, such equipment does not include conventional backup systems of any type;
- Windmills and wind turbines;
- Wind-driven generators;
- Power conditioning and storage devices that use wind energy to generate electricity or mechanical forms of energy; or
- Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

Non-utility Production of Electricity

Non-utility Sales to the Public

The Florida Supreme Court has held that the Florida Statutes mandate that any person who sells electricity to even a single person is a public utility subject to regulation by the Florida Public Service Commission (PSC).¹² The facts of that case are as follows. PW Ventures signed a letter of intent with Pratt and Whitney to provide electric and thermal power at Pratt's industrial complex in Palm Beach County. PW Ventures proposed to construct, own, and operate a cogeneration electric power plant on land leased from Pratt and to sell its output to Pratt under a long-term contract. Before proceeding with construction of the plant, PW Ventures sought a declaratory statement from the PSC that it would not be a public utility subject to PSC regulation. After a hearing, the PSC ruled that PW Ventures' proposed transaction with Pratt fell within its regulatory jurisdiction.

The Court reviewed similar Florida regulatory statutes where the Legislature had expressly provided for exclusions from regulation based on a stated limited number of customers and found that the failure of the Legislature to create such an exclusion for electric services indicated its intent that the term "to the public" include a sale to even one person.

The Court also reviewed the statutory system of electric utility regulation¹³ and found that the regulation of the production and sale of electricity necessarily contemplates the granting of monopolies in the public interest. The Court noted that if the proposed sale of electricity by PW Ventures was outside of PSC jurisdiction, duplication of facilities could occur in contradiction of statutory direction that the PSC exercise its powers to avoid uneconomic duplication of generation, transmission, and distribution facilities.¹⁴ The Court stated that PW Ventures essentially proposed to go into an area served by a utility and take away a major customer. Such an interpretation could allow other ventures to enter into similar contracts with other high use industrial complexes on a one-to-one basis and drastically change the regulatory scheme in this state. "The effect of this practice would be that revenue that otherwise would have gone to the regulated utilities which serve the affected areas would be diverted to unregulated producers. This revenue would have to be made up by the remaining customers of the regulated utilities since the fixed costs of the regulated systems would not have been reduced."¹⁵ Finally the Court

¹² *PW Ventures, Inc. v. Nichols*, 533 So.2d 281 (1988).

¹³ Chapter 366, F.S.

¹⁴ Section 366.04(3), Florida Statutes (1985).

¹⁵ *PW Ventures*, at 283.

found that the Legislature had determined that the protection of the public interest required limiting competition in the sale of electric service.

Based upon these findings, the Court upheld the PSC order that under the proposed arrangement PW Ventures would be a public utility subject to PSC regulation.

Self-generation: PW Ventures

The prohibition on non-utility sales of electricity does not prohibit a person or business from producing electricity solely to furnish its own power. In its finding that the Legislature determined that the protection of the public interest required limiting competition in the sale of electric service, the Florida Supreme Court expressly noted that this determination of public interest did not require a prohibition against self-generation.¹⁶

Self-generation: Cogeneration and Small Power Producers

The statutes expressly provide for self-generation, and for the sale of any excess electricity to a public utility. A public utility is required to purchase electricity from a cogenerator¹⁷ or small power producer¹⁸ located in that public utility's service territory.¹⁹ The PSC is required to establish guidelines relating to the purchase of power or energy and may set rates at which a public utility must purchase the power or energy.²⁰ In fixing rates, the PSC must authorize a rate equal to the purchasing utility's full avoided costs. Full avoided costs are defined as the incremental costs to the utility of the electric energy or capacity, or both, which the utility would generate itself or purchase from another source, if not for the purchase from cogenerators or small power producers.²¹

III. Effect of Proposed Changes:

Section 1 amends s. 421.02, F.S., to declare an important public purpose is served by providing access to essential commercial goods and services necessary for daily living for persons served by public housing authorities. Limited transportation capacity and significant family demands are cited as complications for these persons in their access efforts. The bill also provides that access to essential commercial goods and services for low-income persons who receive services from housing authorities is a public use.

¹⁶ *Id.*, at 284.

¹⁷ Cogeneration is the sequential production of thermal energy and electrical or mechanical energy from the same fuel source. *Florida's Electric Utilities: A Reference Guide*, Revised 1994 Edition, Florida Electric Power Coordinating Group, Inc., Tampa, Florida, page 30.

¹⁸ A small-power producer generates electricity from facilities using biomass, solid waste, geothermal energy or renewable resources (including wind, solar, and small hydroelectric) as their primary energy sources. *Florida's Electric Utilities: A Reference Guide*, Revised 1994 Edition, Florida Electric Power Coordinating Group, Inc., Tampa, Florida, page 188.

¹⁹ Section 366.051, F.S. This was mandated by the federal Public Utility Regulatory Policies Act of 1978, which required that electric utilities purchase the energy produced from qualifying facilities (cogenerators and small power producers) at the utility's avoided cost of generation.

²⁰ *Id.*

²¹ *Id.*

Section 2 amends s. 421.03, F.S., related to definitions. The newly defined term, “essential commercial goods and services” is indicated as referring to goods, such as groceries and clothing, and services, such as child care, K-12 education, financial services, job training and placement, laundry facilities, and “other governmental services” that are necessary for daily living and that may be difficult for persons of low income to access unless located in close proximity with the housing development where they live.

Section 3 amends s. 421.04, F.S., to prohibit housing authorities, regardless of when they were created, from applying to the federal government to seize any projects, units, or vouchers of another established housing authority.

Section 4 amends s. 421.05, F.S., to provide that commissioners of housing authorities are not subject to the prohibitions on extra compensation, bonuses, and severance pay found in s. 215.425, F.S.

Section 5 amends s. 421.06, F.S., to clarify that the ban on commissioners acquiring interests in housing projects extends to “any commercial project” authorized under ch. 421, F.S.

Section 6 amends s. 421.08, F.S., to expand housing authorities’ current power to develop, acquire, lease, construct, rehabilitate, manage, or operate multifamily or single-family residential projects to also include commercial projects that allow access to essential goods and services for persons of low income residing in such residential projects. The bill provides that housing authorities may construct or acquire renewable energy devices or systems that are installed or located on housing authority property for the sole purpose of reducing utility costs to tenants or occupants.

This section of the bill also provides that any revenue received by a housing authority from the specified commercial projects must be used exclusively to upgrade and improve living conditions in the housing project or to preserve and rehabilitate public or affordable housing managed by the housing authority.

Section 7 amends s. 421.09, F.S., to conform a cross-reference.

Section 8 amends s. 421.091, F.S., to exempt housing authorities from reporting requirements of s. 218.32, F.S. Housing authorities would still be responsible for a biennial financial accounting and audit, made by a certified public accountant, and submitted to the federal government, but would not report to the Department of Financial Services.

Section 9 amends s. 421.21, F.S., providing that any affordable housing efforts undertaken by any housing authority created under s. 421, F.S., or its instrumentalities, are exempt from taxation. By referencing ch. 423, F.S., in extending this exemption, the commercial projects described throughout the bill would likely be exempt from paying all taxes, special assessments, and any tax on interest, income, or profits on debt obligations owned by corporations.

Section 10 amends s. 421.28, F.S., providing that regional housing authorities be renamed as consolidated housing authorities, and clarifying the procedures for a merger of authorities that would create such a consolidated housing authority. The bill would allow authorities that are not

under federal receivership to merge into a consolidated housing authority if they are in neighboring areas of operation, instead of being in contiguous counties. The bill requires identical resolutions, a dedicated public hearing, hearings at two consecutive meetings, and a detailed plan for merger. No more than three housing authorities may be combined in a 10-year period, unless supported by a resolution by the local government in the area of operation.

Section 11 amends s. 421.29, F.S., removing certain requirements related to the process for inclusion of additional areas of operation by a consolidated housing authority, and adding conforming language.

Section 12 amends s. 421.30, F.S., to allow the consolidation plan of a consolidated housing authority to specify distribution of appointments, instead of appointments being made by the Governor. Seven commissioners may be appointed, with an extra appointment possible when the area of operation increases.

Section 13 amends s. 421.31, F.S., to remove the authority of the Governor to appoint and remove commissioners of “regional housing” authorities. Instead, consolidated housing authorities would have the power to appoint and remove commissioners of consolidated housing authorities.

Section 14 amends s. 421.32, F.S., to update language and make conforming cross references.

Section 15 amends s. 421.321, F.S., to update language.

Section 16 amends s. 421.50, F.S., removing certain requirements related to the process for decreasing the area of operation of a consolidated housing authority, and adding conforming language.

Section 17 amends s. 421.51, F.S., to clarify that, after exclusion from a consolidated housing authority, both cities and counties may create a new housing authority, after adopting a resolution declaring such a need.

Section 18 amends s. 422.02, F.S., to update the finding of necessity with regard to housing authorities to include access of essential commercial goods and services necessary for daily living.

Section 19 amends s. 422.04, F.S., to expand state public bodies’ authority to aid in the planning, undertaking, construction, or operation of certain projects furnished adjacent to or in connection with housing projects. The bill includes commercial projects that allow access to essential goods and services for persons of low income residing in housing projects among the allowable projects. Language is also updated and clarified.

Section 20 amends s. 423.01, F.S., to declare that facilities made available by housing authorities to provide access to essential goods and services necessary for daily living for persons residing in housing projects are a critical component of those housing projects and constitute a public use and a governmental function.

The bill also enlarges the current exemption from taxes on the property and debentures of housing authorities by declaring that related property and debentures are exempt from taxation if the property is used “to provide access to essential commercial goods and services necessary for daily living” for housing project residents.

Section 21 amends s. 423.02, F.S., to clarify that the tax exemption provided to housing authorities does not apply to activities or property of persons providing essential commercial goods and services, but that the housing authority retains its exemptions from ad valorem tax and special assessments for its property.

Section 22 amends s. 893.13, F.S., to conform a cross-reference to s. 421.03, F.S.

Section 23 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18, Art. VII, State Constitution, provides that except upon approval by two-thirds of the members of each house, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989. The tax exemption provisions of this bill would reduce the revenue-raising authority of municipalities and counties and may require a two-thirds vote of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Department of Revenue notes that the provisions of the bill expanding on public purpose and governmental use are similar to other legislative attempts that have been overturned due to conflict with constitutional provisions concerning property tax exemptions.²²

²² Dep’t of Revenue, *Legislative Bill Analysis for SB 1520*, at 7 (Mar. 24, 2015) (citing *Sebring Airport Authority v. McIntyre*, 783 So.2d 238 (Fla. 2001))

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

Due to tax exemptions for housing authorities and their “instrumentalities” provided for in this bill, local government bodies would incur an indeterminate loss in potential tax revenues. The Revenue Estimating Conference has not conducted an impact conference to estimate the fiscal impact of this bill.

B. Private Sector Impact:

Residents of public housing projects would experience indeterminate transportation savings if the commercial projects proposed by the bill are created on housing authority property.

Businesses that qualify to receive an exemption from property taxes due to their collocation with a housing project could receive a competitive advantage over similar businesses in the area.

C. Government Sector Impact:

To the extent that housing authorities experience additional revenues from providing essential commercial services, they will have an indeterminate reduction in maintenance costs because the bill directs them to use any new revenue streams to preserve and rehabilitate public housing projects. Local government bodies would incur an indeterminate loss in potential tax revenues due to the exemption provisions of the bill.

VI. Technical Deficiencies:

Section 9 of the bill provides for tax exemption of housing authorities and “any affordable housing efforts they undertake, either directly or through instrumentalities,” and section 20 of the bill further states that all property and debentures are exempt from taxation if the property is used “to provide access to essential commercial goods and services necessary for daily living” for housing project residents. However, the bill leaves “instrumentalities” undefined and “affordable housing efforts” vague, as noted by the Department of Revenue.²³ As such, it is unclear to what extent efforts undertaken by instrumentalities to provide commercial access to residents will be tax exempt, especially in light of section 21 of the bill which specifically states that the tax exemption does not apply to activities or property of persons providing essential commercial goods and services.

VII. Related Issues:

In accordance with the decision in the PW Ventures case,²⁴ a housing authority or a provider of “essential commercial goods and services” that sells electricity to even a single person is a public utility subject to regulation by the PSC. However, the prohibition on non-utility sales of

²³ *Id.*

²⁴ *Supra*, note 12.

electricity would not prohibit a housing authority from producing electricity solely to furnish its own power.²⁵

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 421.02, 421.03, 421.04, 421.05, 421.06, 421.08, 421.09, 421.091, 421.21, 421.28, 421.29, 421.30, 421.31, 421.32, 421.321, 421.50, 421.51, 422.02, 422.04, 423.01, 423.02, and 893.13.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²⁵ *Id.* at 284.