

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 421 Public Housing Authority Insurance
SPONSOR(S): Insurance & Banking Subcommittee; Shaw
TIED BILLS: IDEN./SIM. **BILLS:** SB 850

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---------------------|---------|--|
| 1) Insurance & Banking Subcommittee | 15 Y, 0 N, As CS | Lloyd | Luczynski |
| 2) Local, Federal & Veterans Affairs Subcommittee | 13 Y, 0 N | Banner | Miller |
| 3) Commerce Committee | | | |

SUMMARY ANALYSIS

The Legislature has authorized the creation and operation of public housing authorities due to a shortage of safe or sanitary dwelling accommodations available at rents that persons of low income can afford. To provide such accommodations, public housing authorities may acquire property to be used for, or in connection with, housing projects. Among other powers, public housing authorities are authorized to organize and create for-profit corporations, not-for-profit corporations, limited liability companies, and other similar business entities in order to acquire, lease, construct, rehabilitate, manage, or operate multifamily or single-family residential projects.

As an alternative to obtaining insurance from a licensed insurance company, state law allows certain persons to form a self-insurance fund. Public housing authority self-insurance funds are among the types of self-insurance funds specifically authorized by state law.

The bill authorizes a for-profit corporation, not-for-profit corporation, limited liability company, or other similar business entity that a public housing authority owns, in whole or in part, or participates in the governance thereof to join the same self-insurance fund as the authority that owns or governs them. The bill also authorizes these entities when self-insured to purchase reinsurance, as if they were an insurer, in the same manner as self-insured public housing authorities.

The bill has no fiscal impact on state or local government.

The bill has an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Housing Authorities

Florida's 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). 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.

Florida Statutes provide for the creation of special district,¹ city, county, and regional housing authorities. Of the 102 Florida public housing authorities identified in the Florida Housing Data Clearinghouse,² 89 are special districts.³ The determination of the need for a city or county housing authority may be made by the governing body of the city or county or upon the filing of a petition signed by 25 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 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.⁵ The Governor appoints commissioners of county and regional housing authorities.⁶ The powers of each authority are vested in the commissioners and action may be taken upon a majority vote of the commissioners.⁷

Among other things, housing authorities have the power to:

- Acquire, lease, and operate housing projects.
- Provide for the construction, reconstruction, improvement, alteration, or repair of any housing project.
- Lease or rent dwellings, houses, accommodations, lands, buildings, structures, or facilities embraced in any housing project.
- Invest funds held in reserves or sinking funds.
- Organize and create for-profit corporations, not-for-profit corporations, limited liability companies, and other similar business entities in order to acquire, lease, construct, rehabilitate, manage, or operate multifamily or single-family residential projects.⁸

¹ “Special district” means a unit of local government created for a special purpose, as opposed to a general purpose, which has jurisdiction to operate within a limited geographic boundary and is created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, a municipal service taxing or benefit unit as specified in s. 125.01, or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.’ s. 189.012, F.S. A housing authority created by a city may be a “dependent special district.” s. 189.012(2), F.S. County and regional housing authorities may be an “independent special district.” s. 189.012(3), F.S.

² FLORIDA HOUSING DATA CLEARING HOUSE, *Public Housing – Agency: Result*, http://flhousingdata.shimberg.ufl.edu/a/public_housing_agency?next=results&submit_submit.x=15&submit_submit.y=13&nid=1 (last visited Mar. 3, 2017).

³ FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY, *Official List of Special Districts Online*, <https://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/website/cfm> (last visited Mar. 3, 2017).

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. s. 421.05(1), F.S.

⁵ s. 421.28, F.S.

⁶ ss. 421.27 and 421.30, F.S.

⁷ s. 421.06, F.S.

⁸ s. 421.08(8), F.S.

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 aid or cooperation of the federal government for any housing project by the housing authority. Because the federal government has exhibited an interest in shifting more resources from ownership of public housing projects to offering tenants assistance with their rental costs through the Rental Assistance Demonstration, it is anticipated that public housing authorities will organize business entities to facilitate local ownership of public housing projects.⁹

Public Housing Authority Self-Insurance Funds

As an alternative to obtaining insurance from a licensed insurance company, state law allows certain persons to form and obtain insurance coverage from a self-insurance fund. In general, the members of a self-insurance fund assume the risk of loss among themselves, rather than transferring the risk to an insurance company.¹⁰ Various types of self-insurance funds may be established, with varying degrees of state regulation. For certain self-insurance funds, the law requires approval and licensure by the Office of Insurance Regulation (OIR), subject to regulatory requirements that are less restrictive than for insurance companies, but which are intended to provide adequate protections against insolvency and unfair trade practices. For other funds, however, there is little or no regulatory oversight by OIR if certain criteria are met.

Types of self-insurance funds allowed by law include:

- Commercial self-insurance funds¹¹
- Group self-insurance funds¹²
- Local government self-insurance funds¹³
- Self-insured public utilities¹⁴
- Public housing authorities self-insurance funds^{15, 16}
- Independent educational institution self-insurance funds¹⁷
- Corporation not for profit self-insurance funds¹⁸
- Electric cooperative self-insurance fund¹⁹
- Hospital alliances²⁰

Any two or more public housing authorities may form a self-insurance fund, if the fund:

- Has annual premiums over \$5,000,000,
- Uses a qualified actuary who:
 - Develops actuarially sound rates, and
 - Certifies to OIR annually that the rates are not excessive, inadequate, or unfairly discriminatory,

⁹ The Rental Assistance Demonstration is authorized through the Consolidated and Further continuing Appropriations Act, 2012, Pub. L. No. 112-55, H.R. 2112, 112th Cong. (Nov. 18, 2011).

¹⁰ INSURANCE INFORMATION INSTITUTE, Glossary, <http://www.iii.org/services/glossary/s> (last visited on Mar. 3, 2017).

¹¹ s. 624.462, F.S.

¹² s. 624.4621, F.S.

¹³ s. 624.4622, F.S.

¹⁴ s. 624.46225, F.S.

¹⁵ s. 624.46226, F.S.

¹⁶ Public housing authority self-insurance funds pool and spread liabilities of its members for any one or combination of casualty risk or real or personal property risk of every kind and every interest in their property against loss or damage from any hazard or cause and against any loss consequential to such loss or damage. s. 624.46226(1), F.S.

¹⁷ s. 624.4623, F.S.

¹⁸ s. 624.4625, F.S.

¹⁹ s. 624.4626, F.S.

²⁰ s. 395.106, F.S.

- Establishes a reserve for losses and loss adjustment expenses that the qualified actuary determines are adequate²¹ and so certifies to OIR annually,
- Maintains an excess insurance and reserve evaluation program, which:
 - Obtains excess insurance from an admitted insurer or a surplus lines insurer, and
 - Has no more than \$350,000, per loss, in retained risk.
- Annually submits audited financial statements to OIR, which are audited by an independent certified public accountant within six months of the end of the fiscal year,
- Is governed by a body of public housing authority commissioners,²²
- Is administered by licensed knowledgeable²³ people or business entities with required experience,²⁴
- Provides OIR with copies of its member contracts,²⁵ and
- Annually files a board certification to OIR that the requirements of s. 624.46226, F.S., are being met.

If the self-insurance fund meets these requirements, then they are not considered insurers for purposes of the insurance guaranty associations or subject to the provision of the group self-insurance fund law²⁶ and are relieved of any workers' compensation reporting requirement that is unique to group self-insurance funds. Public housing authority self-insurance funds that fail to meet the stated requirements must operate under the more extensive regulations of the Commercial Self-Insurance Fund Act.²⁷

Other benefits of operating as a public housing authority self-insurance fund include:

- Reduced premium taxes.²⁸
- Exemption from the:
 - Florida Hurricane Catastrophe Fund assessment,
 - Various insurance risk apportionment plans, which include those of the windstorm pool, Citizens Property Insurance Corporations, and medical malpractice, and
 - Florida Insurance Guaranty Association assessment.
- Authority to purchase reinsurance.

The Florida Public Housing Authority Self Insurance Fund²⁹ (FPHASIF) is the only self-insurance fund operating under s. 624.46226, F.S.³⁰ A representative of the FPHASIF reports that 22 public housing authorities participate in the fund.

Effect of the Bill

The bill authorizes a for-profit corporation, not-for-profit corporation, limited liability company, or other similar business entity that a public housing authority owns, in whole or in part, or participates in the governance thereof to join the same self-insurance fund as the authority that owns or governs them. The bill also authorizes these entities when self-insured to purchase reinsurance, as if they were an insurer, in the same manner as self-insured public housing authorities.

²¹ If the qualified actuary determines that the reserve is not adequate, the fund must file a remedial plan with OIR for increasing the reserve and addressing the financial condition of the fund. OIR must determine that an imperiled fund under the remedial plan the fund will operate on an actuarially sound basis and there is no significant risk of insolvency. s. 624.46226(1)(c), F.S.

²² The member commissioners must be exclusively from public housing authorities participating in the self-insurance fund.

²³ The administrator must have knowledge of claims administration, claims adjusting, underwriting, risk management, loss control, policy administration, financial audit, and legal issues related to insurance.

²⁴ They must have 5 years' experience in managing commercial self-insurance funds, local government self-insurance funds, or Florida insurers.

²⁵ The member contracts must clearly establish the liability of each member for the obligations of the fund.

²⁶ s. 624.4621, F.S.

²⁷ The Commercial Self-Insurance Fund Act is s. 624.460, F.S., through s. 624.488, F.S.

²⁸ They pay 1.6 percent of gross premiums, contributions, and assessments, rather than 1.75 percent of gross receipts on policies.

²⁹ FLORIDA PUBLIC HOUSING AUTHORITY SELF INSURANCE FUND, <http://www.fphasif.com/> (last visited Mar. 3, 2017).

³⁰ FLORIDA OFFICE OF INSURANCE REGULATION, *Active Company Search*, <http://www.floir.com/CompanySearch/>, select "Public Housing Authority Self-Insurance Funds" under "Company Type" (last visited Mar. 3, 2017).

B. SECTION DIRECTORY:

Section 1. Amends s. 624.46226, F.S., relating to public housing authorities self-insurance funds; exemption for taxation and assessments.

Section 2. Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 7, 2017, the Insurance & Banking Subcommittee considered the bill, adopted one amendment, and reported the bill favorably with a committee substitute. The amendment clarifies that an entity that was organized and created by a public housing authority may only join the same self-insurance fund as the one in which their organizer participates. It also provides for the treatment of reinsurance purchased by and sold to these entities in the same manner as current law treats reinsurance purchased by and sold to public housing authorities.

The staff analysis has been updated to reflect the committee substitute.