

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 253 Independent Living Task Force
SPONSOR(S): Children, Families & Seniors Subcommittee, Gottlieb, Newton and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 670

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	15 Y, 0 N	Royal	Brazzell
2) State Affairs Committee	22 Y, 0 N	Renner	Williamson

SUMMARY ANALYSIS

Persons with developmental disabilities served by the Agency for Persons with Disabilities (APD) generally live with family, in their own homes, or in community-based residential facilities. Most APD clients living in the community, about 19,500 in 2018, live and receive services in their families' homes, with another 5,000 living in their own homes.

Low-cost, supportive, and affordable housing options can result in a greater degree of independence for people with disabilities. Affordability is a primary barrier to independent living for many people with disabilities as 25 percent of working-age people with disabilities live in poverty compared to 9 percent of people without disabilities. Supportive housing options provide people with disabilities opportunities to choose where, how, and with whom they live while providing personalized support services to ensure this level of independence is maintained.

The Florida Housing Finance Corporation (FHFC) was created by the state Legislature to assist in providing a range of affordable housing opportunities for residents. FHFC provides affordable housing opportunities through a number of programs.

Mixed-use development is a real estate development or project that integrates a combination of multiple functions on a single site, such as residential, retail space, hotel or recreational functions.

The bill creates the Independent Living Task Force (Task Force) within FHFC. The Task Force must develop and evaluate policy proposals that incentivize developers or contractors to create units within mixed-use developments that may be used as low-cost, supportive, and affordable housing for individuals with a developmental disability or a mental illness.

The bill specifies membership of the Task Force and requires it to begin meeting by August 1, 2019. It must submit a report of its recommendations and findings to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1, 2020.

The bill may have an insignificant negative fiscal impact on FHFC, as it requires FHFC to administer the activities of the Task Force using existing resources. The bill does not have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Agency for Persons with Disabilities

The Agency for Persons with Disabilities (APD) is responsible for providing services to persons with developmental disabilities. A developmental disability is defined as a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.¹ APD's overarching goal is to prevent or reduce the severity of the developmental disability and implement community-based services that will help individuals with developmental disabilities achieve their greatest potential for independent and productive living in the least restrictive means.²

Developmental Disability Residential Facilities

Persons with developmental disabilities reside in various types of residential settings. Some individuals with developmental disabilities live with family, some live in their own homes, while others may live in community-based residential facilities.³ Pursuant to s. 393.067, F.S., APD licenses and regulates community-based residential facilities that serve and assist individuals with developmental disabilities; these include foster care facilities, group home facilities and residential habilitation centers.⁴ While the majority of APD clients live in the community, a small number live in intermediate care facilities for the developmentally disabled, which are residential institutions regulated by the Agency for Health Care Administration.⁵ Most APD clients living in the community, about 19,500 in 2018, live and receive services in their families' homes, with another 5,000 living in their own homes. Nearly 9,000 clients lived in facilities licensed and overseen by APD in 2018.⁶

Low-Cost, Supportive, and Affordable Housing

Low-cost, supportive, and affordable housing options can result in a greater degree of independence for people with disabilities.⁷ Affordability is a primary barrier to independent living for many people with disabilities as 25 percent of working-age people with disabilities live in poverty compared to 9 percent of people without disabilities.⁸ Affordable housing options can be created by utilizing multiple sources of funding from a combination of tax credits, operating subsidies, and rental-assistance or housing vouchers.⁹

¹ S. 393.063(12), F.S.

² S. 393.062, F.S.

³ S. 393.063(32), F.S., defines residential facility as a facility providing room and board and personal care for persons who have developmental disabilities.

⁴ AGENCY FOR PERSONS WITH DISABILITIES, *Planning Resources*, <http://apd.myflorida.com/planning-resources/> (last visited March 17, 2019). APD also regulates comprehensive transitional education programs (CTEPs) for persons with developmental disabilities; however, no CTEPs currently operate in Florida.

⁵ S. 393.063(25), F.S. See, part VIII of ch. 400, F.S.

⁶ Email from Caleb Hawkes, Legislative Affairs Director, Agency for Persons with Disabilities, RE: Agency Client Placements (February 9, 2018)(on file with the Health and Human Services Committee staff).

⁷ Florida Developmental Disabilities Council, *Housing in Florida: A Resource Guide for Individuals with Developmental Disabilities*, 2013, at 4, available at <http://www.fddc.org/sites/default/files/file/Housing%20Guide.pdf>.

⁸ Id. at 6.

⁹ Independent Living Research Utilization, *Funding Sources Successfully Used by States to Support Development of Integrated, Affordable, and Accessible Community Housing*, November 2007, available at <http://flroof.org/publication/view/funding-sources-successfully-used-by-states-to-support-development-of-integrated-affordable-and-accessible-community-housing/>.

Examples of funding sources utilized in Florida include:

- Funding for subsidized rental units such as the State Apartment Incentive Loan Program (SAIL) and the State Housing Initiatives Partnership Program (SHIP) that provides private or nonprofit developers with upfront construction subsidies so the developer is able to charge a lower rate for rent;¹⁰
- Funding for public monthly rent assistance such as the federal HUD Section 8 Housing Choice voucher that provides a rental subsidy to local public housing authorities;¹¹ and
- Funding for private monthly rent assistance such as the federal Home-Tenant Based Rental Assistance Program that provides a rental subsidy to private landlords.¹²

Supportive housing options provide people with disabilities opportunities to choose where, how, and with whom they live while providing personalized support services to ensure this level of independence is maintained.¹³ Supported living services are provided throughout an individual's daily routine and include assistance in areas such as shopping, cooking, personal care, housekeeping, banking, socialization, and recreation.¹⁴ A supportive housing option allows individuals with a disability to control their home and lifestyle, and providers of support services are flexible and individualized in their delivery of services.¹⁵

Florida Housing Finance Corporation

Florida Housing Finance Corporation (FHFC) was created by the state Legislature to assist in providing a range of affordable housing opportunities for residents.¹⁶ The duties of the FHFC are to:¹⁷

- Encourage the investment of private capital in residential housing through the use of public financing to deal with the problem of disintermediation;¹⁸
- Stimulate the construction and rehabilitation of residential housing;
- Facilitate the purchase and sale of existing residential housing;
- Provide construction and mortgage loans for projects; and
- Make loans to and purchase mortgage loans from private lending institutions.

FHFC provides affordable housing opportunities through a number of programs, including the SAIL and SHIP programs.

Affordable Housing Workgroup

In 2017 the Legislature created the Affordable Housing Workgroup (Workgroup).¹⁹ The executive director of FHFC served as chair of the Workgroup. The Workgroup was charged with developing recommendations to address the state's affordable housing needs including, but not limited to:

- Reviewing housing in Florida, with a focus on affordable rental housing; and
- Examining land use and building codes as they relate to affordable housing.²⁰

¹⁰ *Supra* note 7, at 7. See also Florida Housing Finance Corporation, available at <https://floridahousing.org/> (last visited March 25, 2019).

¹¹ *Id.* at 11.

¹² *Id.* at 50.

¹³ APD, *About Supported Living*, <http://apd.myflorida.com/customers/supported-living/about-supported-living.htm>.

¹⁴ Florida Developmental Disabilities Council, *A Guide to Supported Living in Florida: Chapter One*, January 2005, at 7-8, available at <http://apd.myflorida.com/customers/supported-living/living-guide/docs/chapter1.pdf>.

¹⁵ *Id.*

¹⁶ S. 420.502, F.S.

¹⁷ *Id.*

¹⁸ Disintermediation is the elimination of intermediaries in a supply chain, or "cutting out the middlemen," in connection with a transaction or a series of transactions.

¹⁹ Ch. 2017-71, Laws of Fla.

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The Workgroup recommendations included, but were not limited to, a review of the following:²¹

- Market rate developments;
- Affordable housing developments;
- Land use for affordable housing;
- Building codes for affordable housing developments;
- Florida’s implementation of the low income housing tax credit;
- Private and public sector development and construction industries;
- Rental market for assisted rental housing; and
- Development of strategies and pathways for low income housing.

The recommendations were presented to and approved by the board of directors of FHFC on December 8, 2017.

Mixed-Use Development

Mixed-use development is a real estate development or project that integrates a combination of multiple functions on a single site, such as residential, retail space, hotel, or recreational functions.²² Examples include a single high-rise structure with two or more uses within the single structure, two high-rise structures on a single site with one use within each structure, or a mid-rise structure on a single site with one function, such as retail, on the ground floor and another function, like residential or office, on the upper floors.²³ Mixed-use developments could include a variety of types of residential settings, including low-income housing and assisted living facility units.

Mixed-use developments may present zoning challenges, tenancy law difficulties and, because of the multiple, varying, functions, can be difficult to assess for risk.²⁴ Tax issues may also arise, as addressed in s. 193.0237, F.S.

Some research indicates mixed-use development may reduce crime.²⁵ Research also indicates mixed-use development may be better for seniors aging in place.²⁶

Task Force

Section 20.03(8), F.S., defines “task force” to mean an advisory body created without specific statutory enactment for a time not to exceed one year, or created by specific statutory enactment for a time not to exceed three years, and appointed to study a specific problem and recommend a solution or policy alternative related to that problem. This provision specifies that the existence of a task force terminates upon the completion of its assignment.

²⁰ Affordable Housing Workgroup, Final Report 2017, p. 5, available at <https://floridahousing.org/about-florida-housing/workgroup-on-affordable-housing> (last visited March 25, 2019).

²¹ Id. at 4.

²² Rabianski, Joseph, et al, “Mixed-Use Development: A Review of Professional Literature”, National Association of Industrial and Office Properties Research Foundation, November 2007, at 4, available at <https://www.naiop.org/-/media/Research/Research/Research-Reports/An-Analysis-of-the-Feasibility-of-Mixed-Use-Development/FeasibilityMixedUseDevelopment.ashx>, (last viewed March 17, 2019).

²³ Id. at 5.

²⁴ DeLisle, James, et al, “An Empirical Study of the Efficacy of Mixed-Use Development: The Seattle Experience”, ARES Conference 2011, available at <https://www.naiop.org/-/media/Research/Research/Research-Reports/An-Empirical-Study-of-the-Efficacy-of-Mixed-Use-Development/ARES-AnEmpiricalStudyoftheEfficacyofMixedUseDevelopment.ashx> (last viewed March 17, 2019).

²⁵ Anderson, James M., et al, “Reducing Crime by Shaping the Built Environment with Zoning: An Empirical Study of Los Angeles”, University of Pennsylvania Law Review, Vol. 161, No. 699, 2013;

²⁶ Leyden KM, “Social Capital and the Built Environment: The Importance of Walkable Neighborhoods”, American Journal of Public Health, 2003, vol. 93 (1546-1551); Freedman, VA, et al, “Neighborhoods and Disability in Later Life”, Social Science & Medicine, 2008, vol. 66 (pg. 2253-2267); Berke, EM, et al, “Association of the Built Environment with Physical Activity and Obesity in Older Persons”, American Journal of Public Health, 2007, vol. 97 (pg. 486-492).

Effect of the bill

The bill creates the Independent Living Task Force (Task Force)²⁷ within the FHFC. The bill requires FHFC to use existing resources to administer the activities of the Task Force. The bill requires the Task Force to develop and evaluate policy proposals that incentivize developers or contractors to create units within mixed-use developments that may be used as low-cost, supportive, and affordable housing for individuals with a developmental disability²⁸ or a mental illness²⁹ as defined by current law.

The Task Force consists of the following members:

- Director of the FHFC or his or her designee, who serves as chair;
- Director of the Agency for Persons with Disabilities or his or her designee;
- Secretary of the Department of Children and Families or his or her designee;
- Executive director of the Department of Economic Opportunity or his or her designee;
- Secretary of the Department of Business and Professional Regulation or his or her designee;
- Executive director of the Commission for the Transportation Disadvantaged or his or her designee;
- Governor-appointed individual;
- A representative from the following groups appointed by the director of the FHFC:
 - Florida Supportive Housing Coalition;
 - Florida Housing Coalition;
 - Florida Independent Living Council;
 - ARC of Florida;
 - National Alliance on Mental Illness-Florida;
 - Florida League of Cities;
 - Florida Association of Counties;
 - Association of Florida Community Developers;
 - Associated Builders and Contractors of Florida;
 - Florida Association of Rehabilitation Facilities;
 - Florida Developmental Disabilities Council;
 - Banking industry, with involvement in financing mixed-used developments;
 - Coalition of Affordable Housing Providers;
 - Commercial Real Estate Development Association; and
 - Attorney who is a member in good standing of the Elder Law Section of the Florida Bar.

The bill requires the Task Force to identify potential barriers and opportunities to incentivize building contractors and developers to create low-cost, supportive, and affordable housing units for individuals with developmental disabilities or mental illness in mixed-use developments. The bill also requires the Task Force to make recommendations and proposals for modifications to existing laws, rules, or policies; new policies, rules, or laws; and funding mechanisms to facilitate the creation of low-cost, supportive, and affordable housing units for individuals with developmental disabilities or mental illness in mixed-use developments.

Members of the Task Force serve without compensation and are not entitled to reimbursement for per diem or travel expenses. The bill requires the Task Force to begin meeting by August 1, 2019, and produce a report of its recommendations and findings to the Governor, the President of the Senate, and

²⁷ It is established as a task force as defined in s. 20.03, F.S.

²⁸ S. 393.063(12), F.S. defines developmental disability as a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

²⁹ S. 394.455(28), F.S., defines mental illness as an impairment of the mental or emotional processes that exercise conscious control of one's actions or of the ability to perceive or understand reality, which impairment substantially interferes with the person's ability to meet the ordinary demands of living. The term does not include a developmental disability as defined in ch. 393.

the Speaker of the House of Representatives by December 1, 2020. The bill provides for the expiration of the section on February 1, 2021, once the work of the Task Force is completed.

B. SECTION DIRECTORY:

Section 1: Creates s. 420.5075, F.S., relating to independent living task force.

Section 2: Provides that the bill takes effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill requires FHFC to use existing resources to administer the activities of the Task Force.

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 affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 20, 2019, the Children, Families & Seniors Subcommittee adopted an amendment and reported HB 253 favorably as amended. The amendment:

- Gives the responsibility for the task force to the Florida Housing Finance Corporation, and has its director appoint the task force members.
- Changes the goal of the goal of the task force to creating units within mixed-use developments which may be used as low-cost, supportive, and affordable housing.
- Includes the broader range of developmental disabilities served by the Agency for Persons with Disabilities.
- Adds new members to the task force.
- Provides for the expiration of the section once the task force's work is done.

The analysis is drafted to the bill as amended by the Children, Families & Seniors Subcommittee.