

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 39 Independent Living Task Force

**SPONSOR(S):** Local, Federal & Veterans Affairs Subcommittee, Gottlieb and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 340, SB 364

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	10 Y, 0 N, As CS	Renner	Miller
2) Children, Families & Seniors Subcommittee			
3) State Affairs Committee			

### SUMMARY ANALYSIS

Low-cost, supportive, and affordable housing options may 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 continues.

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

A 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 who have a disability defined by the Americans with Disabilities Act.

The bill specifies membership of the Task Force and requires it to begin meeting by August 1, 2020. 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, 2021.

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

##### Independent Living

The term “independent living” is not defined in Florida Statutes. “Independent living” may refer to an elderly person with the physical and mental capacity to live independently but who wants companionship or otherwise needs supportive services.<sup>1</sup> It may also encompass a living arrangement for people with disabilities who need supportive services.

In 1988, the Legislature created the Florida Independent Living Council.<sup>2</sup> The council’s responsibilities include jointly developing and submitting the state plan for independent living.<sup>3</sup> The council works to ensure that persons with disabilities have an opportunity for input into the development of the State Plan for Independent living and works for systematic change in the areas that are the biggest barriers to people with disabilities participating fully in their communities.<sup>4</sup> The council describes the independent living philosophy as “promot[ing] consumer control of services, self-determination and equal access and participation in every aspect of community life, to the level that individual wishes.”<sup>5</sup>

Independent living communities are communities in which healthy individuals may live on their own but that do not offer assisted living or nursing services. Independent living communities may offer amenities such as transportation, security, yard maintenance, laundry service, group meals, and social and cultural activities.<sup>6</sup> Currently, there are over 200 independent living communities in Florida.<sup>7</sup>

##### Low-Cost, Supportive, and Affordable Housing

Low-cost, supportive, and affordable housing options may result in a greater degree of independence for people with disabilities.<sup>8</sup> 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.<sup>9</sup> Affordable housing options may be created by utilizing multiple sources of funding from a combination of tax credits, operating subsidies, and rental-assistance or housing vouchers.<sup>10</sup>

Examples of funding sources utilized in Florida include:

- Funding for subsidized rental units through programs such as the State Apartment Incentive Loan Program (SAIL) and the State Housing Initiatives Partnership Program (SHIP) that provide private or nonprofit developers with upfront construction subsidies so the developer is able to charge a lower rate for rent;<sup>11</sup>

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<sup>1</sup> aPlaceforMom, *Independent Living in Florida*, available at <https://www.aplaceformom.com/independent-living/florida> (last visited Nov. 6, 2019).

<sup>2</sup> Ch. 88-214, Laws of Fla.

<sup>3</sup> S. 413.395, F.S.

<sup>4</sup> Floridasilc.org, *About Independent Living*, available at <https://www.floridasilc.org/independent-living/> (last visited Nov. 6, 2019).

<sup>5</sup> *Id.*

<sup>6</sup> Senior Living.org, *Selecting an Independent Living Community*, available at <https://www.seniorliving.org/independent-living/> (last visited Nov. 6, 2019).

<sup>7</sup> *Supra* note 1.

<sup>8</sup> 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>. (last visited Oct. 28, 2019).

<sup>9</sup> *Id.* at 6.

<sup>10</sup> Independent Living Research Utilization, *Funding Sources Successfully Used by States to Support Development of Integrated, Affordable, and Accessible Community Housing*, May, 2016, available at <https://www.ilru.org/funding-sources-successfully-used-states-support-development-integrated-affordable-and-accessible>. (last visited Oct. 28, 2019).

<sup>11</sup> *Supra* note 8, at 7. See also Florida Housing Finance Corporation, available at <https://floridahousing.org/> (last visited Oct. 7, 2019).

- 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;<sup>12</sup> 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.<sup>13</sup>

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 continues.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup>

### Florida Housing Finance Corporation

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

- Encourage the investment of private capital in residential housing through the use of public financing to deal with the problem of disintermediation;<sup>18</sup>
- 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.<sup>19</sup>

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).<sup>20</sup> 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.<sup>21</sup>

The Workgroup recommendations included, but were not limited to, a review of the following:<sup>22</sup>

- Market rate developments;
- Affordable housing developments;
- Land use for affordable housing;
- Building codes for affordable housing developments;

<sup>12</sup> *Id.* at 11.

<sup>13</sup> *Id.*

<sup>14</sup> APD, *About Supported Living*, available at <http://apd.myflorida.com/customers/supported-living/about-supported-living.htm>. (last visited Oct. 28, 2019).

<sup>15</sup> 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>. (last visited Oct. 28, 2019).

<sup>16</sup> *Id.*

<sup>17</sup> S. 420.502, F.S.

<sup>18</sup> 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.

<sup>19</sup> S. 420.502(7), F.S.

<sup>20</sup> Ch. 2017-71, Laws of Fla.

<sup>21</sup> Affordable Housing Workgroup, Final Report 2017, p. 5, available at <https://floridahousing.org/about-florida-housing/workgroup-on-affordable-housing> (last visited Oct. 7, 2019).

<sup>22</sup> *Id.* at 4.

- 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 Workgroup also recommended creating a workgroup of subject matter experts to create an alternative credit underwriting approach for developments serving persons with special needs and homeless households developed and/or operated by nonprofit organizations.<sup>23</sup>

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

### Mixed-Use Development

A 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.<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup> Tax issues may also arise, as addressed in s. 193.0237, F.S.

### Task Force

“Task force” means 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.<sup>27</sup> This provision specifies that the existence of a task force terminates upon the completion of its assignment.

### **Effect of the bill**

The bill creates the Independent Living Task Force (Task Force)<sup>28</sup> 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 disability defined in the Americans with Disabilities Act (ADA).<sup>29</sup>

The Task Force consists of the following members:

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<sup>23</sup> *Id.* at 48

<sup>24</sup> 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.aspx>, (last viewed Oct. 7, 2019).

<sup>25</sup> *Id.* at 5.

<sup>26</sup> 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.aspx> (last viewed Oct. 7, 2019).

<sup>27</sup> S. 20.03(8), F.S.

<sup>28</sup> It is established as a task force as defined in s. 20.03, F.S.

<sup>29</sup> Pursuant to 42 U.S.C. § 12102, the ADA defines a disability as a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment. The ADA does not specifically name all of the impairments that are covered. See also the Americans with Disabilities Act website, *available at* [https://www.ada.gov/ada\\_intro.htm](https://www.ada.gov/ada_intro.htm) (last visited Nov. 6, 2019).

- 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;
- Secretary of the Department of Elderly Affairs 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;
  - Florida Behavioral Health Association;
  - Florida Assisted Living 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 disabilities 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 disabilities 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, 2020, and produce 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, 2021. The bill provides for the expiration of the section on January 1, 2022, 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 November 6, 2019, the Local, Federal & Veterans Affairs Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Revises the definition of “disability” to be the same as in the Americans with Disabilities Act and makes conforming changes throughout the bill;
- Adds the Secretary of the Department of Elderly Affairs or his or her designee, and a representative from the Florida Behavioral Health Association and from the Florida Assisted Living Association to the Task Force;
- Changes the date the Task Force must convene its first meeting from June 1, 2020 to August 1, 2020;
- Changes the date a report must be submitted from December 1, 2020 to December 1, 2020, and;
- Changes the date the Task Force must expire from January 1, 2021 to January 1, 2022.

This analysis is drafted to the committee substitute as approved by the Local, Federal & Veterans Affairs Subcommittee.