

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

SPONSOR(S): State Affairs Committee, Children, Families & Seniors Subcommittee, Local, Federal & Veterans Affairs Subcommittee, Gottlieb and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/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	11 Y, 0 N, As CS	Morris	Brazzell
3) State Affairs Committee	24 Y, 0 N, As CS	Renner	Williamson

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 the individual may continue to live with a certain level of independence.

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, including the State Apartment Incentive Loan Program and the State Housing Initiatives Partnership Program, that provide private or nonprofit developers with upfront construction subsidies so the developer is able to charge a lower rate for rent.

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 disability, while giving special consideration to the needs of individuals who have a developmental disability or a mental illness.

The bill specifies the 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 Task Force expires January 1, 2022.

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

Disability

The term “disability,” as enacted in the Americans with Disabilities Act,¹ means a physical or mental impairment that substantially limits one or more major life activities such as caring for oneself, performing manual tasks, seeing, walking, hearing, standing, learning, thinking, and communicating. Types of disabilities include ambulatory, hearing, cognitive, vision, independent living, and self-care.² Disabilities can be related to conditions present at birth, associated with developmental conditions, related to an injury, or associated with a longstanding condition.³ Individuals with disabilities are a diverse group of people with a wide range of needs.⁴

Approximately 26 percent of the United States population has a disability.⁵ Florida’s disability population is 28 percent of the state population.⁶

A disability may have an impact on an individual’s ability to independently live and work in the community based on the nature of the disability. Barriers to independent living include:

- Lack of affordable or physically accessible housing;
- Lack of qualified support staff;
- Parent or guardian opposition;
- Lack of affordable and accessible transportation;
- Lack of adequate medical or dental care;
- Neighborhood opposition;
- Lack of jobs, job training, and supported employment;
- Lack of residential services; and
- Lack of day services.⁷

A lack of housing options can cause individuals with disabilities to reside in homeless shelters, public institutions, nursing homes, board and care homes, at home with aging parents, or in segregated group quarters.⁸

Developmental Disabilities and Mental Illnesses

A “developmental disability” is a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi

¹ 42 U.S.C. §. 12101.

² United States Census Bureau, *Types of Disabilities*, <https://www.census.gov/library/visualizations/2019/comm/types-of-disabilities.html> (last visited Dec. 4, 2019).

³ Centers for Disease Control and Prevention, *Disability Health Overview*, <https://www.cdc.gov/ncbddd/disabilityandhealth/disability.html> (last visited Dec. 4, 2019).

⁴ *Id.*

⁵ Centers for Disease Control and Prevention, *Disability and Health Infographics*, <https://www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html> (last visited Dec. 19, 2019).

⁶ Centers for Disease Control and Prevention, *Florida Disability*, https://www.cdc.gov/ncbddd/disabilityandhealth/impacts/pdfs/Florida_Disability.pdf (last visited Dec. 19, 2019).

⁷ National Council on Disability, *Living Independently and in the Community: Implementation Lessons from the United States*, https://ncd.gov/rawmedia_repository/685cba5b_974d_47ce_922a_d74df9893c2b.pdf (last visited Dec. 4, 2019).

⁸ Priced Out, *The Housing Crisis for People with Disabilities*, <http://www.tacinc.org/media/59493/priced-out-in-2016.pdf> (last visited Dec. 4, 2019).

syndrome, which manifests before the age of 18 and constitutes a substantial handicap that can reasonably be expected to continue indefinitely.⁹

“Mental illness” is 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 and substantially interferes with a person’s ability to meet the ordinary demands of living.¹⁰ Examples include depression, anxiety, bipolar disorder, personality disorders, posttraumatic stress disorder, and schizophrenia.¹¹ Symptoms of a mental illness may be occasional or chronic.¹²

Independent Living

The term “independent living” is not defined in Florida Statutes.

The federal Rehabilitation Act of 1973, as amended,¹³ created a framework for states to obtain funding for independent living programs, known as Centers for Independent Living, which work to support community living and independence for people with disabilities.¹⁴ There are 16 Centers for Independent Living in Florida, which together serve all 67 counties.¹⁵ To receive funding, states must develop a State Plan for Independent Living (SPIL), which is a three-year plan for providing independent living services in the state, through a designated Statewide Independent Living Council (SILC).

In 1988, the Legislature created the Florida Independent Living Council (council), which serves as Florida’s SILC.¹⁶ The council’s responsibilities include jointly developing and submitting the state plan for independent living.¹⁷ The council works to ensure that persons with disabilities have an opportunity for input into the development of the SPIL and works for systematic change in the areas that are the biggest barriers to people with disabilities participating fully in their communities.¹⁸ 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.”¹⁹ The council’s 2017-2019 state plan identified the need for safe, affordable, accessible housing as being critical for Florida’s Centers for Independent Living and noted a lack of housing is commonly identified as the main barrier to independent living.²⁰

Low-Cost, Supportive, and Affordable Housing

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.²¹ As such, low-cost, supportive, and affordable housing options may result in a greater degree of independence for people with disabilities.²² Affordable housing options may be created by

⁹ S. 393.063(12), F.S.

¹⁰ S. 394.455(28), F.S.

¹¹ The Centers for Disease Control and Prevention, *Learn About Mental Health*, <https://www.cdc.gov/mentalhealth/learn/index.htm> (last visited Dec. 16, 2019).

¹² *Id.*

¹³ 29 U.S.C. §701 et seq.

¹⁴ Administration for Community Living, *Centers for Independent Living*, <https://acl.gov/programs/aging-and-disability-networks/centers-independent-living> (last visited Dec. 3, 2019).

¹⁵ Florida Department of Education Division of Vocational Rehabilitation, *Independent Living Program*, http://www.rehabworks.org/indep_living.shtml (last visited Dec. 3, 2019).

¹⁶ Ch. 88-214, Laws of Fla.

¹⁷ S. 413.395, F.S.

¹⁸ Florida Independent Living Council, *About Independent Living*, <https://www.floridasilc.org/independent-living/> (last visited Nov. 26, 2019).

¹⁹ *Id.*

²⁰ State Plan for Independent Living for Florida for 2017-2019, https://www.floridasilc.org/documents/State_Plan.pdf (last visited Dec. 4, 2019).

²¹ *Id.* at 6.

²² Florida Developmental Disabilities Council, *Housing in Florida: A Resource Guide for Individuals with Developmental Disabilities*, 2013, at 4, <https://www.fddc.org/sites/default/files/file/Housing%20Guide.pdf>. (last visited Nov. 26, 2019).

utilizing multiple sources of funding from a combination of tax credits, operating subsidies, and rental-assistance or housing vouchers.²³

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;²⁴
- 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;²⁵ 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.²⁶

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.²⁷ Supported living services can be provided throughout an individual's daily routine and include assistance in areas such as shopping, cooking, personal care, housekeeping, banking, socialization, and recreation.²⁸ A supportive housing option allows individuals with a disability to control their home and lifestyle with individualized and flexible support services to meet their needs.²⁹

Florida Housing Finance Corporation

The Florida Housing Finance Corporation (FHFC) was created by the Legislature to assist in providing a range of affordable housing opportunities for residents.³⁰ The Legislature found that it is necessary to:

- Encourage the investment of private capital in residential housing through the use of public financing to deal with the problem of disintermediation;³¹
- 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.³²

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).³³ 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:

²³ Independent Living Research Utilization, *Funding Sources Successfully Used by States to Support Development of Integrated, Affordable, and Accessible Community Housing*, May 2016, <https://www.ilru.org/funding-sources-successfully-used-states-support-development-integrated-affordable-and-accessible>. (last visited Nov. 26, 2019).

²⁴ *Supra* note 21, at 7. See also Florida Housing Finance Corporation, <https://floridahousing.org/> (last visited Nov. 26, 2019).

²⁵ *Id.* at 11.

²⁶ *Id.*

²⁷ Agency for Persons with Disabilities, *About Supported Living*, <http://apd.myflorida.com/customers/supported-living/about-supported-living.htm>. (last visited Nov. 26, 2019).

²⁸ Florida Developmental Disabilities Council, *A Guide to Supported Living in Florida: Chapter One*, January 2005, at 7-8, <http://apd.myflorida.com/customers/supported-living/living-guide/docs/chapter1.pdf>. (last visited Nov. 26, 2019).

²⁹ *Id.*

³⁰ S. 420.502, F.S.

³¹ 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.

³² S. 420.502(7), F.S.

³³ Ch. 2017-71, Laws of Fla.

- Reviewing housing in Florida with a focus on affordable rental housing; and
- Examining land use and building codes as they relate to affordable housing.³⁴

The Workgroup recommendations included a review of the following:³⁵

- 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 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 or operated by nonprofit organizations.³⁶

The FHFC board of directors approved the recommendations 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.³⁷ 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.³⁸ 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.³⁹

Task Force

A task force is 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.⁴⁰ The existence of a task force terminates upon the completion of its assignment.⁴¹

Effect of the Bill

³⁴ Affordable Housing Workgroup, Final Report 2017, p. 5, <https://floridahousing.org/about-florida-housing/workgroup-on-affordable-housing> (last visited Nov. 26, 2019).

³⁵ *Id.* at 4.

³⁶ *Id.* at 48

³⁷ 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, <https://www.naiop.org/-/media/Research/Research/Research-Reports/An-Analysis-of-the-Feasibility-of-Mixed-Use-Development/FeasibilityMixedUseDevelopment.aspx>, (last visited Nov. 26, 2019).

³⁸ *Id.* at 5.

³⁹ DeLisle, James, et al, “An Empirical Study of the Efficacy of Mixed-Use Development: The Seattle Experience,” ARES Conference 2011, <https://www.naiop.org/-/media/Research/Research/Research-Reports/An-Empirical-Study-of-the-Efficacy-of-Mixed-Use-Development/ARES-AnEmpiricalStudyoftheEfficacyofMixedUseDevelopment.aspx> (last visited Nov. 26, 2019).

⁴⁰ S. 20.03(8), F.S.

⁴¹ *Id.*

The bill creates the Independent Living Task Force (Task Force) 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 development that may be used as low-cost, supportive, and affordable housing for individuals with a disability, as defined in the Americans with Disabilities Act, while giving special consideration to the needs of individuals who have a developmental disability or a mental illness.

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;
- Secretary of the Department of Elderly Affairs or his or her designee;
- Governor-appointed individual;
- An attorney who is a member in good standing of the Elder Law Section of the Florida Bar; and
- A representative from each of 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
 - Florida Association of Managing Entities.

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. By December 1, 2021, the Task Force must produce a report of its recommendations and findings to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The bill provides for the expiration of the Task Force on January 1, 2022.

B. SECTION DIRECTORY:

Section 1: Creates s. 420.5075, F.S., relating to the Task Force.

Section 2: Provides that the bill takes effect upon becoming a 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, 2021; and
- Changes the expiration date of the Task Force from January 1, 2021, to January 1, 2022.

On December 12, 2019, the Children, Families & Seniors Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Removes a reference to the specific version of the Americans with Disabilities Act in effect as of the date the bill becomes law; and
- Requires the Task Force to give special consideration to the needs of individuals with developmental disabilities or mental illnesses when developing and evaluating policy proposals.

On January 16, 2020, the State Affairs Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment adds a representative from the Florida Association of Managing Entities to the Task Force.

This analysis is drafted to the committee substitute as approved by the State Affairs Committee.