

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 Rules

BILL: CS/CS/SB 364

INTRODUCER: Rules Committee; Community Affairs Committee; and Senators Rader, Torres, and others

SUBJECT: Independent Living Task Force

DATE: February 19, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Delia</u>	<u>Hendon</u>	<u>CF</u>	<u>Favorable</u>
2.	<u>Paglialonga</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3.	<u>Delia</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 364 creates a 26 member Independent Living Task Force (the task force) within the Florida Housing Finance Corporation (FHFC). The objective of the task force is to develop and evaluate policy proposals that incentivize building contractors and developers to create low-cost, supportive, and affordable housing for individuals who need such housing and who have a developmental disability or a mental illness. The task force is required to give special consideration to the needs of individuals with a developmental disability or a mental illness when developing policy proposals.

The task force must submit a written report containing findings, conclusions, and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than January 15, 2022.

The bill requires the FHFC to use existing resources to administer and support the task force.

The bill provides for the dissolution of the task force by January 1, 2022.

The bill takes effect upon becoming a law.

II. Present Situation:

Task Force Requirements under section 20.03, Florida Statutes

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 1 year or created by specific statutory enactment for a time not to exceed 3 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.

Independent Living

The Florida Statutes do not define the term “independent living.” “Independent living” can refer to when an elderly person still has the physical and mental capacity to live independently but wants companionship or otherwise needs supportive services.¹ It can also encompass a living arrangement for people with disabilities who need supportive services.

In 1988, the Legislature created the Florida Independent Living Council.² The council is responsible for, among other things, jointly developing and submitting the State Plan for Independent Living.³ The council works to ensure that individuals with disabilities have an opportunity for input into the development of the State Plan for Independent Living and work for systematic change in the areas that are the biggest barriers to people with disabilities participating fully in their communities.⁴ 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.”⁵

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

Florida Housing Finance Corporation

The Florida Housing Finance Corporation (FHFC), a public corporation administratively housed within the Department of Economic Opportunity (DEO),⁸ is the state’s affordable housing finance agency. As such, the FHFC is responsible for increasing the amount of affordable

¹ According to the senior living search website, aPlaceforMom, *Independent Living in Florida*, available at: <http://www.aplaceformom.com/independent-living/florida> (last visited Nov. 1, 2019).

² Chapter 88-214, Laws of Fla.

³ Section 413.395, F.S.

⁴ Floridasilc.org, *About Independent Living*, available at: <https://www.floridasilc.org/independent-living/> (last visited November 1, 2019).

⁵ *Id.*

⁶ Seniorliving.org, *Selecting an Independent Living Community* (Feb. 14, 2011), available at: <http://www.seniorliving.org/lifestyles/independent-living-communities/> (last visited Nov. 1, 2019).

⁷ According to the senior living search website, aPlaceforMom, *Independent Living in Florida*, available at: <http://www.aplaceformom.com/independent-living/florida> (last visited Nov. 1, 2019).

⁸ Section 420.504(1), F.S.

housing available to individuals and families by stimulating investment of private capital and encouraging public and private sector housing partnerships. To accomplish this, the FHFC uses federal and state resources to finance the development of safe, affordable homes and rental housing and to assist first-time homebuyers.⁹

Americans with Disabilities Act

The Americans with Disabilities Act of 1990 (ADA) is a federal law that prohibits discrimination against people with disabilities. Under the ADA, an individual with a disability is a person who:

- Has a physical or mental impairment that substantially limits one or more major life activities;
- Has a record of such an impairment; or
- Is regarded as having such an impairment.¹⁰

The ADA specifies that major life activities include but not limited to, “caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.”¹¹ In addition to the above activities, the ADA also covers individuals with impaired bodily functions. Under the ADA, “a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.”¹²

In 2008, Congress amended the ADA to lower the burden for plaintiffs to prove that they meet the ADA’s definition of disability.¹³ The ADA specifies that the definition of disability “shall be construed in favor of broad coverage.”¹⁴

Notwithstanding the broad interpretation of a “disability” by the ADA, some individuals are excluded from coverage. A person who is a current user of illegal drugs is not covered, but a person who has a substantial history of drug or alcohol abuse and addiction may be covered.¹⁵ Persons with sexual behavior disorders are not covered.¹⁶ Persons who have conditions of compulsive gambling, kleptomania, and pyromania are also not regarded as disabled by the ADA.¹⁷

⁹ See ss. 420.502 and 420.507, F.S.

¹⁰ 42 U.S.C. s. 12102(1)

¹¹ 42 U.S.C. s. 12102(2)(A)

¹² 42 U.S.C. s. 12102(2)(B)

¹³ *Green v. Cellco Partnership*, 218 F.Supp.3d 157 (U.S. District Court D. Conn. 2016)

¹⁴ *Id.* at 162.

¹⁵ The Council for Disability Rights, *The Americans with Disabilities Act: Frequently Asked Questions*, available at: <http://disabilityrights.org/adafaq.htm> (last visited Dec. 10, 2019).

¹⁶ *Id.*

¹⁷ *Id.*

U.S. Disability Statistics

Approximately 43 million Americans have physical or mental disabilities that are covered by the ADA.¹⁸ The Council for Disability Rights estimates that the average U.S. Citizen has a 20 percent chance of becoming disabled during their lifetime and a 50 percent chance of having a family member with a disability.¹⁹

The unemployment rate²⁰ for persons with a disability was 8.0 percent in 2018, more than twice the rate of those with no disability (3.7 percent).²¹ Although this is a great disparity, this comparison does not include a large proportion of persons who were not in this labor force²² calculation. In 2018, about 8 out of every 10 people with a disability were not considered part of the labor force (employed or actively seeking employment) compared with about 3 in 10 of those with no disability.

Among persons ages 16 to 64, the employment-population ratio²³ for persons with a disability was 30.4 percent in 2018.²⁴ Alternatively, the employment-population ratio for persons ages 16 to 64 without a disability was 74.0 percent in 2018.²⁵ The ratio for persons age 65 and older with a disability was 7.4 percent and the ratio for persons age 65 and older without a disability was 23.6 percent in 2018.²⁶ Although persons with a disability are less likely to be employed at an older age, persons of all ages with a disability were much less likely to be employed than those with no disability.²⁷

III. Effect of Proposed Changes:

Section 1 creates s. 420.5075, F.S., to establish the Independent Living Task Force within the FHFC for administrative purposes only. The FHFC is to use existing and available resources to support the activities of the task force.

The bill directs the task force to evaluate policy proposals that incentivize building contractors and developers to create units within mixed-use developments for individuals who have a disability, as defined by the ADA. The task force is required to give special consideration to the needs of individuals with a developmental disability or a mental illness when developing policy proposals.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Unemployed persons are those who did not have a job, were available for work, and were actively looking for a job in the 4 weeks preceding the survey.

²¹ Bureau of Labor Statistics, *Persons with a Disability: Labor Force Characteristics Summary*, available at: <https://www.bls.gov/news.release/disabl.nr0.htm> (last visited Dec. 10, 2019).

²² Persons who are not employed, looking for employment, or considered unemployed are not in the labor force.

²³ The proportion of an economy's working-age population that is employed.

²⁴ Bureau of Labor Statistics, *Persons with a Disability: Labor Force Characteristics Summary*, available at: <https://www.bls.gov/news.release/disabl.nr0.htm> (last visited Dec. 10, 2019).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

The task force is to be chaired by the executive director of the FHFC, or his or her designee, and composed of 26 members, to include:

- The director of the Florida Housing Finance Corporation or his or her designee, who shall serve as chair of the task force;
- The director of the Agency for Persons with Disabilities or his or her designee;
- The Secretary of the Department of Children and Families, or his or her designee;
- The executive director of the Department of Economic Opportunity, or his or her designee;
- The Secretary of the Department of Business and Professional Regulation, or his or her designee;
- The executive director of the Commission for the Transportation Disadvantaged, or his or her designee;
- The Secretary of the Department of Elderly Affairs, or his or her designee;
- An individual appointed by the Governor;
- A representative from the Florida Supportive Housing Coalition;
- A representative from the Florida Housing Coalition;
- A representative from the Florida Independent Living Council;
- A representative from the ARC of Florida;
- A representative from the National Alliance on Mental Illness of Florida;
- A representative from the Florida League of Cities;
- A representative from the Florida Association of Counties;
- A representative from the Association of Florida Community Developers;
- A representative from the Associated Builders and Contractors of Florida;
- A representative from the Florida Association of Rehabilitation Facilities;
- A representative from the Florida Developmental Disabilities Council;
- A representative from the banking industry who finances mixed-use developments;
- A representative from the Coalition of Affordable Housing Providers;
- A representative from the Commercial Real Estate Development Association;
- A representative from the Florida Behavioral Health Association;
- A representative from the Florida Association of Managing Entities;
- A representative from the Florida Assisted Living Association; and
- An attorney who is a member in good standing of the Elder Law Section of The Florida Bar.

Members of the task force shall serve without compensation or reimbursement for per diem or travel expenses. The task force is directed to convene its first meeting by August 1, 2020. The task force must meet as often as necessary to fulfill its responsibilities under the bill, and meetings may be conducted in person, by teleconference, or by other electronic means.

The bill directs the task force to work in consultation with local and state government to identify potential barriers and opportunities in current law, recommend modifications to existing laws, rules, or policies, recommend financial and regulatory incentives, evaluate policy proposals, and propose funding mechanisms to incentivize building contractors and developers to create low-cost, supportive, and affordable housing units within mixed-use developments for individuals with disabilities.

The task force must submit a final report containing its findings, conclusions, and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1, 2021. The task force must dissolve on or before January 1, 2022.

Section 2 provides that the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill provides that the task force members are to serve without compensation and are not entitled to reimbursement for per diem or travel expense. Thus, to the extent travel is required, the members will incur associated costs.

C. Government Sector Impact:

The DEO anticipates that it will incur a minor amount of travel and other administrative expenses as the FHFC is housed within DEO, and it is the agency directed to use existing resources to administer and support the activities of the task force.

VI. Technical Deficiencies:

The bill requires the task force to submit a report to the Governor, Senate President, and Speaker of the House of Representatives by January 15, 2022, however the bill provides that the law expires on January 1, 2022. It is recommended that the expiration date be moved to a later date or the due date of the report be moved to an earlier date.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 420.5075 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Rules on February 19, 2020:**

The committee substitute:

- Requires the task force to give special consideration to the needs of individuals with a developmental disability or a mental illness when developing policy proposals.
- Adds a representative from the Florida Association of Managing Entities;
- Changes the report submission deadlines from December 1, 2021 to January 15, 2022.

CS by Community Affairs on December 9, 2019:

The committee substitute:

- Replaces “developmental disability,” as defined in s. 393.063, F.S., and “mental illness,” as defined in s. 394.455, F.S., with “disability,” as defined by the Americans with Disabilities Act in 42 U.S.C. s. 12102(1).
- Adds the Secretary of Elderly Affairs or his or her designee to the task force.
- Adds a representative from the Florida Behavioral Health Association to the task force.
- Changes first meeting deadline from June 1, 2020 to August 1, 2020.
- Changes report submission deadline from December 1, 2020 to December 1, 2021.
- Changes task force expiration date from January 1, 2021 to January 1, 2022.

B. Amendments:

None.