



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Empower Families – The bill may increase the availability of affordable public housing for low income persons and families.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

Federal public housing programs are intended to provide decent and safe housing for eligible low-income families, the elderly, and persons with disabilities. The U.S. Department of Housing and Urban Development (HUD) administers federal aid to local public housing authorities (PHA) that manage the housing for low-income residents. A PHA is typically a municipal or county agency created under state law to develop and manage public housing units for low-income families. PHAs that participate in the low-rent program contract with HUD to provide housing in exchange for federal grants and subsidies.

While HUD has a range of affordable housing initiatives, the department's public housing programs have focused on assisting low and very low income households. Historically, HUD provides funding to local agencies to operate and repair low rent units through the Operating Fund and the Capital Fund. The Operating Fund provides annual subsidies to housing agencies to make up the difference between the amount they collect in rent and the cost of operating the units. The Capital Fund provides grants to PHAs for the major repair and modernization of the units. Under HUD's tenant-based voucher (Section 8) program, eligible households select their own units in the private housing market and receive subsidies to cover part of the rent. Housing agencies that participate in the tenant-based program enter into contracts with HUD and receive funds to provide rent subsidies to the owners of private housing on behalf of the assisted households.

**Public Housing Authorities in Florida** - Florida has approximately 107 PHAs serving almost 300,000 low-income Floridians.<sup>1</sup> These individuals represent more than 115,000 households. Nearly 60 percent of the 41,560 public housing units are occupied by households in the extremely-low income group (annual incomes below the federal poverty level). Florida's PHAs currently provide Housing Choice Vouchers (Section 8 housing) to approximately 87,000 households. More than 55,000 households are on waiting lists for residence in public housing units, and more than 80,000 households are on voucher waiting lists. Total expenditures by PHAs in Florida were more than \$819 million during federal fiscal year 2003.<sup>2</sup>

Chapter 421, F.S., governs the establishment and operation of PHAs in Florida. Local governments are authorized to establish PHAs as special districts.<sup>3</sup> Section 421.02, F.S., provides a legislative declaration of necessity for public housing. Specifically, this section provides: "Slum areas in the state cannot be cleared, nor can the shortage of safe and sanitary dwellings for persons of low income be relieved, through the operation of private enterprise, and that the construction of housing projects for persons of low income, as herein defined, would therefore not be competitive with private enterprise."

Pursuant to s. 421.08, F.S., PHAs are authorized to engage in a range of housing-related activities. For example, PHAs are authorized to acquire, lease, and operate housing projects, and to provide for the construction, reconstruction, improvement, alteration, or repair of housing projects. PHAs are also

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<sup>1</sup> *Public Housing Authorities in Florida: An Analysis of Selected Issues*, Shimberg Center for Affordable Housing, University of Florida, February 2004.

<sup>2</sup> *Id.*

<sup>3</sup> Public housing authorities meet the definition of a special district as provided in s. 189.403(1), F.S.

authorized to lease or rent any accommodations, lands, buildings, structures, or facilities contained in any housing project and, to establish and revise the rents or charges. Currently, PHAs are not specifically authorized to create a for-profit or not-for-profit corporation, limited liability company, or similar entity to develop and operate residential homes or nonresidential projects. PHAs are also prohibited from operating housing projects on a for-profit basis or as a source of revenue for local governments.

Section 421.54, F.S., establishes certain restrictions on PHAs located in Orange and Seminole counties. This section provides that prior to the construction of new housing facilities in these counties, PHAs subject to this section must obtain the approval of the governing body of the area where the housing project is to be located at a public hearing. At the public hearing the names of the real parties in interest, directly or indirectly, in the proposed project must be disclosed. If the housing project is not approved by a majority vote of the governing body at the public hearing, the PHA may request the governing body to order a referendum election in the precinct where the proposed housing project is to be located.

**Changing HUD Policies** - In recent years, HUD has encouraged PHAs to adopt more entrepreneurial and innovative approaches to the delivery of low-income housing. For example, through the HOPE VI program, first funded in 1993, and similar initiatives, HUD has endorsed a mixed-finance approach to the replacement of public housing developments. This approach emphasizes the formation of new public-private partnerships that leverage funds into the public housing process to create sustainable, mixed-income communities. These initiatives use a combination of private financing and public housing development funds to create public housing units owned by an entity other than a PHA. The public housing development funds may be provided to a third-party (non-PHA entity) so that it can develop and own the resulting public housing units.

According to a 2004 report issued by the Shimberg Center for Affordable Housing, nine Florida PHAs have received 13 HOPE VI grants since 1993. These grants totaled nearly \$250 million. Recipient PHAs have leveraged these grants with other public and private funds to bring the total investment in revitalization of distressed public housing and surrounding neighborhoods to more than \$657 million under this program.<sup>4</sup>

## **Effect of Proposed Changes**

### **Legislative Intent**

The bill revises the legislative finding of necessity regarding public housing to eliminate antiquated language and provides that the public housing problem cannot be relieved solely through private enterprise. It also removes the declaration that the construction of housing projects for persons of low income would not be competitive with private enterprise.

### **Formation of Business Entities**

The bill authorizes a PHA to create for-profit and not-for-profit corporations, limited liability companies, and similar business entities in which the PHA may have an ownership interest or management role in order to develop, acquire, lease, construct, rehabilitate, manage or operate multifamily or single family residential projects. Any such entities must be organized pursuant to all applicable state laws.

The bill also allows the PHA-affiliated corporations, limited liability companies or other business entities to join partnerships, joint ventures, limited liability companies or otherwise to engage with business entities to develop, acquire, lease, construct, rehabilitate, manage or operate multifamily or single family residential projects.

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<sup>4</sup> *Public Housing Authorities in Florida: An Analysis of Selected Issues*, Shimberg Center for Affordable Housing, University of Florida, February 2004.

## **Use and Eligibility for Funds**

The bill authorizes the residential projects to include nonresidential uses and to utilize public and private funds to serve individuals and families: (1) who meet the applicable income requirements of the state and federal programs involved; (2) whose income does not exceed 150 percent of the applicable median income for area; and (3) who, in the opinion of the PHA, lack sufficient income or assets to enable them to purchase or rent a decent, safe, and sanitary dwelling.

## **Ratification of Existing Business Activities**

The bill also ratifies the existence and operation of any existing for-profit or not-for-profit entity that is properly registered pursuant to all applicable state laws or public-private partnership created or entered into by a PHA prior to the effective date of this bill.

## **Revision of Per Diem and Travel Requirements**

The bill also provides PHA governing boards with authority, notwithstanding s. 112.061, F.S., relating to per diem and travel, to adopt policies for per diem, travel, and other expenses consistent with federal guidelines. This will remove PHA governing boards from the limitations provided by s. 112.061, F.S.

## **Restriction of Not-for-Profit Limitation**

The bill specifies that the not-for-profit status of a PHA does not prohibit or restrict it from creating a for-profit business entity or entering into partnerships, joint partnerships or other business arrangements with for-profit companies to provide residential housing. The law still prohibits a PHA from constructing or operating any public housing project for profit or as a source of revenue to a city, but it appears that the bill will allow a PHA, through its affiliated business entity, to operate a housing project on a for profit basis.

## **PHA Liability**

The bill provides that liabilities incurred by governing boards of PHAs may not be payable from the rents, fees, revenues, grants or subsidies paid by the federal government “unless such other funds are lawfully pledged by the authority’s governing board.”

## **Elimination of Notice and Vote for Orange and Seminole Counties**

The bill repeals the notice and local governing body approval requirements applicable to new public housing projects in Orange and Seminole counties.

### **C. SECTION DIRECTORY:**

Section 1. Amends s. 421.02, F.S., relating to the finding and declaration of necessity for public housing.

Section 2. Amends s. 421.08, F.S., relating to the powers of a public housing authority.

Section 3. Amends s. 421.09, F.S., relating to the not-for-profit operation of a public housing authority.

Section 4. Amends s. 421.23, F.S., relating to the liabilities of a public housing authority.

Section 5. Repeals s. 421.54, F.S., relating to a limitation on new housing projects without a vote of approval by the local governing authority.

Section 6. Provides an effective date of July 1, 2005.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill appears not to have any impact on state government revenues.

#### 2. Expenditures:

The bill appears not to have any impact on state government expenditures.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill appears not to have any impact of local government revenues.

#### 2. Expenditures:

The bill appears not to have any impact of local government revenues.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will create additional opportunities for private entities to enter into public-private partnerships with PHAs for the development of federally-funded residential and non-residential projects.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill appears to allow a PHA, through its affiliated business entity, to operate for-profit with respect to the creation or operation of a public housing project. The bill does not make clear how any profits

realized by the affiliated business entity will be used however. Such profits could be limited to reinvestment in public housing projects for example.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On March 10, 2005, the Economic Development, Trade and Banking Committee adopted a strike-all amendment to the bill. The amendment:

Clarifies the declaration of necessity to state that the public housing problem cannot be relieved solely through the operation of private enterprise; and

Requires business entities organized by a public housing authority to be organized under all applicable state laws and requires that existing business entities be properly registered under all applicable state laws.