

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 107 Community Residential Homes
SPONSOR(S): Lopez-Cantera and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 618

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Future of Florida's Families Committee		Davis	Collins
2) Growth Management Committee			
3) Health Care Appropriations Committee			
4) Health & Families Council			
5) _____			

SUMMARY ANALYSIS

HB 107 amends the statutory provision relative to Community Residential Homes to expand the scope of local government approval over homes with six or fewer residents that otherwise meet the definition of community residential homes. (Local approval is presently required for homes with 7 to 14 unrelated residents.)

According to the Agency for Persons with Disabilities, the fiscal impact of this bill could make siting homes much more difficult, especially in urban areas where most individuals live. With there simply being fewer places to locate homes, this would limit the future supply of homes, which in turn will limit the choice of individuals with disabilities about where to live and provide fewer options for families who are unable to care for their loved ones with developmental disabilities. Institutional care is also much more costly to the state, with its average cost of over \$91,000 annually compared to the estimated average cost of a group home placement of \$45,000. With fewer residential options available, it could also lead to an increase in homelessness and the use of expensive crisis services for persons with developmental disabilities.

One potential constitutional concern is whether or not discrimination may be claimed by persons with developmental disabilities and other protected classes of persons. See CONSTITUTIONAL ISSUES section of the analysis for complete analysis of case law, the American with Disabilities Act (ADA), and the Fair Housing Act.

The effective date of this bill is July 1, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: This bill increases local government authority by requiring government approval of a community residential home with six or fewer residents.

Safeguard Individual Liberty: This bill provides for new government interference/involvement with an individual's liberty to start a community residential home of six or fewer residents.

Empower Families: This bill arguably decreases the empowerment of families as it will be made more difficult for people with developmental disabilities, and other community residential home residents to have a family type living environment that is comparable to other Floridians. Self support and management of ones life will be made potentially more difficult as the local government will be empowered to potentially restrict the creation of community residential homes in some areas.

B. EFFECT OF PROPOSED CHANGES:

Present Situation: Historically, living placement options for the physically disabled, handicapped, developmentally disabled, mentally ill, and children were primarily state institutions or nursing homes. However, that began to change in Florida in the 1980's as the Florida Legislature began to develop a policy of community integration as an effective treatment method for those in need. The history of community integration has not always been an easy transition, but great strides have been made in combating discriminatory policies against the mentally ill, elderly, handicapped and children in need. These changes can largely be attributed to the development of Federal law that focused on protecting these protected classes of individuals.

In 1989, HB 1269 (Chapter 89-372 L.O.F) established the framework for what is currently s. 419.001, F.S. One of the purposes was to prevent or reduce inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care. The goal was simply to follow a deinstitutionalization model for placement of persons with special needs in the least restrictive setting and for the encouragement of placement of such individuals in community residential facilities. The state has a significant interest in the development of community residential homes because of the service they provide. These homes provide a living environment for many different types of people. They include children who may be dependent and are placed in licensed child care settings. Some group homes may serve the developmentally disabled in a licensed residential facility; while other group homes provide a living environment for the elderly in an adult congregate living facility. All of these services and many more that may be offered provide a service that is needed in some capacity in Florida.

Currently, s. 419.001, F.S., requires the local government to approve the location of certain residential homes which provide for a living environment for 7 to 14 unrelated residents. When a site for a community residential home has been selected by a sponsoring agency in an area zoned for multifamily use, the agency shall notify the Chief Executive Officer of the local government in writing. The local government then has up to 60 days to respond and if no response is given within 60 days, the sponsoring agency may establish the home at the site in question. Currently, homes with six or fewer residents shall be deemed a single family unit without approval by the local government, provided that the home does not exist in a 1,000 feet radius of another six or fewer resident home.

As of January of 2004, the Department of Children and Families (DCF) reports that over 5,000 individuals with Developmental Disabilities live in foster care facilities and group home facilities licensed by DCF and operated by private providers. There are approximately 1,000 licensed facilities which serve as alternatives to institutional care, enabling individuals to live in a family-like setting in the community where necessary supports are available.

Section 419.001(1)(d), F.S., defines a “resident” as a:

- “Frail elder” pursuant to s. 400.618 F.S., which includes a functionally impaired person who is over the age of 60 who has physical and mental limitations that restricts the ability of that person to live independently and perform normal activities of daily living.
- “Physically disabled or handicapped person” pursuant to s. 760.22(7)(a), F.S., which includes a person that has a physical or mental impairment which substantially limits one or more major life activities, or he or she has a record of having, or is regarded as having, such physical or mental impairment.
- “Developmentally disabled person” pursuant to s. 393.063 F.S., which includes a person with a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.
- Nondangerous “mentally ill person” pursuant to s. 394.455(18), F.S., which includes 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 a person's ability to meet the ordinary demands of living, regardless of etiology. For the purposes of this part, the term does not include retardation or developmental disability as defined in chapter 393, intoxication, or conditions manifested only by antisocial behavior or substance abuse impairment.
- “Child” who is found to be dependent by the court pursuant to s. 39.01(14), F.S., and a “child” in need of services pursuant to ss. 984.03(9) and 985.03(8), F.S.

When programs of community living began, much resistance was met by individuals, homeowners associations, and local governments with a “not in my backyard” attitude. Currently, some proponents feel that clustering has taken place within some communities and that local control needs to be established so that this can be avoided. Some homeowners feel that they have a right to have a channel to voice their opinions and a right to be given notice before a community residential facility is placed in their neighborhood. On the other hand, the Florida Developmental Disabilities Council feels that by limiting community residential homes with six or less people and placing them under local control that an important option of being assimilated into the greater fabric of the community will be lost.

Section 393.062, F.S., provides in part:

“...The Legislature declares that the goal of this act, to improve the quality of life of all developmentally disabled persons by the development and implementation of community-based residential placements, services and treatment, cannot be met without ensuring the availability of community residential opportunities for developmentally disabled persons in the residential areas of this state. The Legislature, therefore, declares that all persons with developmental disabilities who live in licensed community homes shall have a family living environment comparable to other Floridians. The Legislature intends that such residences shall be considered and treated as a functional equivalent of a family unit and not as an institution, business, or boarding home.”

Effect: The proposed change will essentially treat community residential homes of seven to fourteen residents the same as homes with six or fewer residents. That is, community residential homes with six or fewer residents will have to seek local government approval in order to be appropriately zoned as a site. According to the Agency for Persons with Disabilities, “Governor Bush has been very supportive of our recent efforts to expand the opportunities available to individuals with developmental disabilities in order to maximize their independence and facilitate their integration into the non-disabled community. Provisions of this bill present barriers to the Department’s community inclusion efforts....”

According to the Agency for Persons with Disabilities, the passage of this bill will have the following effects:

- The bill would make siting homes much more difficult, especially in urban areas where most individuals live. With there simply being fewer places to locate homes, this would limit the future supply of homes, which in turn will limit the choice of individuals with disabilities about where to live and provide fewer options for families who are unable to care for their loved ones with developmental disabilities. For instance, if a family is unable to care for their loved one with a developmental disability but a group home placement were not available due to restricted supply, this could force some individuals into institutions who would otherwise wish and be able to live in the community. Institutional care is also much more costly to the state, with its average cost of over \$91,000 annually compared to the estimated average cost of a group home placement of \$45,000. With fewer residential options available, it could also lead to an increase in homelessness and the use of expensive crisis services for persons with developmental disabilities.
- This bill would also raise the costs the state must pay for group homes and associated costs such as transportation to and from them, since homes will be less likely to be located near doctors' offices, workplaces, and sites of other social services accessed by individuals. It would also make it more difficult for homes to access these services. Most individuals served by the Developmental Disabilities Program rely on others to provide them transportation (fixed route buses, paratransit services, and so forth), and this transportation would be less available and more expensive with homes locating in less densely populated areas. This in turn would lead to less community involvement, fewer individuals able to have paid employment, and perhaps even decreased access to health care for the individuals living in these homes.

C. SECTION DIRECTORY:

Section 1. Amends s. 419.001(2), F.S., to require local government zoning authority over residential homes with six or fewer residents.

Section 2. Provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill would restrict the ability of private organizations to provide cost-effective residential services to persons with developmental disabilities.

D. FISCAL COMMENTS:

According to the Agency for Persons with Disabilities, "Institutional care is also much more costly to the state, with its average cost of over \$91,000 annually compared to the estimated average cost of a group home placement of \$45,000. With fewer residential options available, it could also lead to an increase in homelessness and the use of expensive crisis services for persons with developmental disabilities."

On July 1, 2003, the Developmental Disabilities Program within the Department of Children and Families implemented a statewide uniform rate system in which rates would be standardized. If rates are insufficient to encourage the opening of new homes, rates would need to be raised. This would increase the costs to the state of providing foster care facility or group home facility services. For instance, homes in commercial areas may have increased insurance costs, and homes forced into less-urban areas may need to purchase larger tracts of land (though the cost per acre is likely lower than in more urban areas), rural residential lots tend to be larger on average (3 acres is the average, according to the U.S. Department of Agriculture).

This bill may raise the state's and local governments' costs per unit of providing transportation disadvantaged services to those individuals with developmental disabilities who rely upon it, since homes will be more likely to be located in rural settings, where the zoning criteria may be more easily met and where cost of providing transportation (if it is available) is greater. Only 22 of Florida's counties have fixed route buses, and these are more likely to run in the more densely populated areas. This means that individuals in other areas (such as less densely populated areas, where homes are more likely to have to locate under the bill) must rely on paratransit services, which have a higher cost of operation. This bill may require a greater total outlay and/or result in lower growth or reduction in the number of individuals served.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

One potential constitutional concern is whether or not discrimination may be claimed by persons with developmental disabilities and other defined protected classes.

In *Dornbach v. Holley*, 854 So.2d 211, (Fla 2d DCA 2002), owners of residential real property in a subdivision brought action seeking injunctive relief, alleging that proposed use of subdivision property as a group home for four to six developmentally disabled adults violated subdivision's restrictive covenants. The Circuit Court, Polk County, J. Dale Durrance, J., granted permanent injunction. Owners of the property to be used as a group home appealed. The District Court of Appeal, Davis, J., held that enforcing deed restriction against a group home was impermissibly discriminatory. In finding this ruling the court discussed the argument that the enforcement of a restrictive covenant is contrary to the United States Fair Housing Act of 1988 (FHAA). This act added handicapped persons to those protected from discrimination in buying and renting facilities.

The Florida Legislature essentially codified the Federal Act when it enacted the Florida Fair Housing Act in sections 760.20 - 760.37, F.S. Section 760.23(7)(b), F.S., provides that is unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of any person residing in or intending to reside in the dwelling after it is sold, rented, or made available. The statute states further that discrimination is also defined as to include a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

In considering the application of the Florida Fair Housing Act, the federal courts have determined that one may be guilty of discrimination in any one of three ways. First, the Act prohibits intentional discriminatory conduct towards a handicapped person. See *Martin v. Constance*, 843 F.Supp. 1321 (E.D.Mo.1994). Second, the Act prohibits incidental discrimination, that is, an act that results in making property unavailable to a handicapped person. Id. Third, the Act prohibits an act that fails to make a reasonable accommodation that would allow a handicapped person the enjoyment of the chosen residence. See *Advocacy Ctr. for Persons with Disabilities, Inc. v. Woodlands Estates Ass'n*, 192 F.Supp.2d 1344 (M.D.Fla.2002). The Court was persuaded that, given the similarity of language and purpose in the federal and the Florida legislation, this three-pronged approach applies equally to the Florida Fair Housing Act. The record in *Dornbach* does show that by enforcing the restriction in question, incidental discrimination results since the residence is made unavailable for the handicapped. See *Rhodes v. Palmetto Pathway Homes, Inc.*, 303 S.C. 308, 400 S.E.2d 484 (1991). Finally, public policy as stated in section 419.001(2) and in section 393.062, Florida Statutes (2000), supports the premise that the group home in *Dornbach* is the functional equivalent of a single-family residential unit and as such does not pose any threat to the purpose justifying the deed restrictions at issue. Thus, to refuse to waive these restrictions is to refuse to offer a reasonable accommodation, which also amounts to discrimination as defined by statute. See *Advocacy Ctr.*, 192 F.Supp.2d 1344.

In July 1999, the U.S. Supreme Court, in the *Olmstead v. L.C.* decision challenged federal, state, and local governments to develop more opportunities for individuals with disabilities through accessible systems of cost-effective community-based services (*Olmstead v. L. C.* 527 U.S. 581 (1999)). The *Olmstead* decision interpreted Title II of the Americans with Disabilities Act (ADA) and its implementing regulation, requiring states to administer their services, programs, and activities "in the most integrated setting appropriate to the needs of qualified individuals with disabilities." The ADA and the *Olmstead* decision apply to all qualified individuals with disabilities regardless of age.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority to the Department of Children and Families.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Chapter 419, F.S., requires the Department of Children and Families to license community residential homes. Staff research has revealed that several other state agencies are involved in the licensing of community residential-type facilities. In addition to the Department of Children and Families, the Agency for Persons with Disabilities, the Department of Juvenile Justice, and the Agency for Health Care Administration license these facilities. Since there is not one central licensing agency, there is the potential that residential group homes could be located next to each other in the same community without the knowledge of the other licensing agency.

The Florida Developmental Disabilities Council, Inc., provided the following statement:

- The proposed bill would provide a barrier to achieving Inclusion or making sure that everyone regardless of ability can enjoy the same activities and lifestyle as typically functioning people. The intent of this proposed legislation could limit opportunities for Inclusion at a time when a

person with a developmental disability needs more options. Providers of residential homes would have more hurdles and less encouragement to provide an inclusive environment.

- Our social service delivery system has been (in large part) privatized so that private businesses can provide state services. It seems counterproductive to label these providers as commercial enterprises when they are the sole providers of residential services to the developmentally disabled.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES