

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – To conform to federal law, this bill revises the access and services public accommodations and governmental entities must provide to disabled persons and broadens the definition of service animal that may accompany a disabled person.

Safeguard individual liberty – This bill codifies in state law the requirements of federal law relating to disabled persons' access to and service by public accommodations and governmental entities. It broadens the scope of "service animals" that may accompany disabled persons to said places.

Promote personal responsibility – This bill increases the penalty for one who denies admittance to a disabled person or interferes with the disabled person's enjoyment of a public accommodation.

B. EFFECT OF PROPOSED CHANGES:

Background

Since the 1960's, companion animals have been used to increase the physical mobility and personal independence of disabled people.² As the use of service animals increased in popularity, individual States and the federal government enacted legislation providing access rights for these animals.³ All fifty States have now passed legislation regarding service animal access.⁴ However, because federal legislation provides greater protection for individuals with disabilities than state efforts, it preempts local and state laws and regulations.⁵

The first piece of federal legislation enacted in this area was the Air Carrier Access Act of 1986.⁶ This regulation specifically clarifies that air carriers must allow "dogs and other service animals used by individuals with a disability to accompany the persons on a flight."⁷ A service animal is defined as "any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items."⁸ To determine whether an animal boarding a carrier is a service animal, the Act states that "[c]arriers shall accept as evidence that an animal is a

² Kelly Henderson, *No Dogs Allowed?*, FEDERAL POLICIES ON ACCESS FOR SERVICE ANIMALS (Animal Welfare Information Center), Summer 1996, at 1, <http://www.nal.usda.gov/awic/newsletters/v7n2/7n2hende.htm> [hereinafter Henderson]. Under federal law, the term "disability" in regard to an individual means: "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment." 42 U.S.C. § 12102(2) (2005). See also 28 C.F.R. § 36.104 (2005) (explaining the terms physical and mental impairment and defining the scope of the term disability).

³ Henderson, *supra* note 2, at 2.

⁴ *Id.*

⁵ U.S. Department of Justice, Civil Rights Division, *Commonly Asked Questions About Service Animals in Places of Business*, <http://www.usdoj.gov/crt/ada/qasrvc.htm>.

⁶ Air Carrier Access Act, 49 U.S.C. app. 1374 (1986).

⁷ 14 C.F.R. § 382.55(a) (2005).

⁸ 28 C.F.R. § 36.104 (2005).

service animal” “written documentation,” the presence of “harnesses,” “markings,” or “tags,” “or the credible verbal assurances of the qualified individual with a disability using the animal.”⁹

In a second piece of legislation, Congress provided explicit rights to accommodations for persons with disabilities through the Fair Housing Amendments Act of 1988, which forbids discrimination based on a person’s disability in the sale or rental of a dwelling.¹⁰ In a specific example, Congress made clear that reasonable accommodations should be made for service animals.¹¹

The final piece of legislation enacted by Congress in this area of law was the Americans with Disabilities Act of 1990.¹² Title III of this Act deals most directly with service animals and “prohibits discrimination of people with disabilities in public accommodations and services operated by public entities.”¹³ Accordingly, a public accommodation is generally required to “modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability.”¹⁴ However, a public accommodation is not required “to supervise or care for a service animal.”¹⁵

Effect of Proposed Changes

Comparing the above to the proposed bill shows that the changes proposed by HB 153 update the Florida Statutes to correspond to federal legislation.

The bill adds the following definitions: housing accommodation, individual with a disability, service animal, and place of public accommodation. It provides that an individual with a disability is entitled to full and equal access in all state and local government facilities, programs, services, and activities. Additionally, it prohibits requiring documentation that a service animal is trained as a precondition for providing service to an individual accompanied by a service animal; however, a proprietor is authorized to ask if the animal is a service animal or what tasks the animal has been trained to perform in order to distinguish a service animal from a pet. An individual with a service animal may not be segregated from other customers or the public.

The bill prohibits a proprietor from charging a deposit or surcharge as a condition of providing access to an individual accompanied by a service animal. However, if it is the regular policy of the proprietor to charge a non-disabled person for damage caused by their pet, the individual with a disability must also pay for any damage caused by their service animal.

The bill allows a proprietor or government employee to exclude or remove a service animal from its premises if the animal’s behavior poses a direct threat to the health and safety of others. Allergies and fear of animals are not permissible bases for exclusion under the bill.

The bill increases the penalty for discriminating against an individual with a disability when providing housing accommodations from a second degree misdemeanor to a first degree misdemeanor.

C. SECTION DIRECTORY:

Section 1: Revises s. 413.08, F.S., to conform it to federal requirements related to service animals and persons with disabilities.

⁹ 14 C.F.R. § 382.55(a)(1) (2005).

¹⁰ 42 U.S.C. § 3604 (2005).

¹¹ 24 C.F.R. § 100.204 (1989).

¹² Americans with Disabilities Act, *supra* note 1.

¹³ Henderson, *supra* note 2, at 4.

¹⁴ 28 C.F.R. § 36.302(c) (2005).

¹⁵ 28 C.F.R. § 36.302(c)(2) (2005).

Section 2: Amends s. 413.081, F.S., to make conforming changes with the provisions of Section 1 of this bill. These changes include defining the term "service animal."

Section 3: Provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill is not expected to impact state government revenue.

2. Expenditures:

Because this bill is similar to enacted federal law which preempts state law in this area, state government should already be adhering to the practices proposed in this bill and therefore, not incur any expenditures in complying with this legislation.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill is not expected to impact local government revenue.

2. Expenditures:

Because this bill is similar to enacted federal law which preempts state law in this area, local governments should already be adhering to the practices proposed in this bill and therefore, not incur any expenditures in complying with this legislation.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Because this bill is similar to enacted federal law which already governs private entities, the private sector should already be adhering to the practices proposed in this bill and therefore, not incur any expenditures in complying with this legislation.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES