

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Children and Families Committee

BILL: CS/SB 618

SPONSOR: Children and Families Committee, Senators Garcia and Lynn

SUBJECT: Community Residential Homes

DATE: April 7, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Collins</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Herrin</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable</u>
3.	_____	_____	<u>HA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute (CS) for Senate Bill 618 revises the definition of “community residential home” to specify that the home serves as a dwelling for residents who are the clients of the Department of Elderly Affairs, the Agency for Persons with Disabilities, and the Department of Juvenile Justice, as well as the Department of Children and Family Services (DCF), or a dwelling unit licensed by the Agency for Health Care Administration.

The sponsoring agency of a proposed home for six or fewer residents is required to provide to local government, prior to occupancy, the most recently published compiled data that identifies all community residential homes in the county in which the proposed site is to be located.

The committee substitute directs the licensing entity, rather than the district administrator of DCF, to perform certain actions relating to the establishment of community residential homes. The licensing entity is prohibited from issuing a license to a sponsoring agency if that agency has failed to provide the appropriate notifications to local government.

Upon approval, this CS becomes effective July 1, 2005.

This CS amends section 419.001 of the Florida Statutes.

II. Present Situation:

Section 419.001, F.S., specifies the site selection requirements for community residential homes. Section 419.001(1)(a), F.S., defines “community residential home” as a dwelling unit licensed to serve clients of the Department of Children and Family Services, which provides a living environment for seven to 14 unrelated residents who operate as the functional equivalent of a

family, including such supervision and care by supportive staff as may be necessary to meet the physical, emotional, and social needs of the residents. 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.

The term “resident” is defined under s. 419.001(1)(d), F.S., to mean any of the following:

- A frail elder pursuant to s. 400.618, F.S., which includes a functionally impaired person who is over the age of 60 and who has physical and mental limitations that restrict the ability of that person to live independently and perform normal activities of daily living;
- A physically disabled or handicapped person pursuant to s. 760.22(7)(a), F.S., which includes a person who has 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;
- A developmentally disabled person pursuant to s. 393.063(10), 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;
- A 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; or
- A child pursuant to s. 39.01(14), F.S., who is found to be dependent by the court and a child in need of services pursuant to s. 984.03 (9) or (12), or s. 985.03(8), F.S.

This section further provides that 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 and include certain information in the notice. 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 within a 1,000 feet radius of another six or fewer residential home.

A number of the provisions reflected in s. 419.001, F.S., are outdated and do not reflect systemic changes that moved certain client service functions from DCF. For example, community residential homes currently serve the clients of a number of different agencies, in addition to those of DCF. These agencies include the Department of Elder Affairs, the Agency for Persons with Disabilities, the Department of Juvenile Justice, and the Agency for Health Care Administration. Also, the department is required to notify local government at the time of occupancy that the home is licensed by the department. Further, the district administrator is

directed to provide a statement indicating the need for and the licensing status of the proposed community residential home as well as to provide recently published data that is compiled and identifies all community residential homes in the district. A District Community Residential Home Coordinator is currently located in each DCF district and has responsibilities to carry out certain provisions of ch. 419, F.S. However, these persons only perform functions related to community residential homes serving clients of DCF.

As the result of moving certain client service functions as described above, the provisions of ch. 419, F.S., are being carried out by the respective agencies differently depending upon the type of residents who are to live in the proposed community residential home. All of the requirements specified by ch. 419, F.S., can no longer be performed by DCF.

Fair Housing Act

Chapter 760, Part II, F.S., also known as the “Fair Housing Act” provides that it is the policy of this state to provide, within constitutional limitations, for fair housing throughout the state. This chapter further specifies that it is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling because of race, color, national origin, sex, handicap, familial status, or religion or an intention to make any such preference, limitation, or discrimination.

III. Effect of Proposed Changes:

Section 1 amends s. 419.001, F.S., to revise the definition of “community residential home” to specify that the home serves as a dwelling for residents as defined in paragraph (c) who are the clients of the Department of Elderly Affairs, the Agency for Persons with Disabilities, and the Department of Juvenile Justice, as well as the Department of Children and Family Services, or a dwelling unit licensed by the Agency for Health Care Administration. The list of residents in paragraph (c) has not been changed by this CS.

This CS requires the sponsoring agency of a proposed home for six or fewer residents to provide a local government, prior to occupancy, the most recently published compiled data that identifies all community residential homes in the county in which the proposed site is to be located in order to show that there is no other community residential home located within a 1,000 feet radius of the proposed home. At the point of occupancy, the sponsoring agency must notify the local government that the home is licensed.

The CS makes the licensing entity, rather than the district administrator of DCF, responsible for certain actions. These actions include providing a statement indicating the need for and other licensing information pertaining to the proposed home and providing to the local government the most recently published compiled data that identifies all community residential homes in the county. The licensing entity is prohibited from issuing a license to a sponsoring agency if that agency has failed to provide the appropriate notifications to local government.

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

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

One potential constitutional concern is whether or not discrimination may be claimed by persons with developmental disabilities and other defined protected classes. The Florida Legislature essentially codified the Federal Act when it enacted the Florida Fair Housing Act (FHAA) in sections 760.20 - 760.37, F.S. The United States Fair Housing Amendments Act of 1988 added handicapped persons to those classifications protected from discrimination in buying and renting housing facilities. Section 760.23(7)(b), F.S., provides that it 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.

An appellate court has ruled on the enforcement of deed restrictions that prohibit the siting of a community residential home within a subdivision. In *Dornbach v. Holley*, 854 So.2d 211, (Fla. 2d DCA 2002), the owners of residential real property in a subdivision brought action in the lower court seeking injunctive relief, alleging that proposed use of subdivision property as a group home for four to six developmentally disabled adults violated the subdivision's restrictive covenants. The lower court entered an order granting a permanent injunction. The owners of the property to be used as a group home appealed. The Second District Court of Appeal held that enforcing such a deed restriction against a group home was impermissibly discriminatory under the Florida Fair Housing Act. Because the Florida Fair Housing Act and federal law are so similar, the court found the federal courts application of the FHAA persuasive.

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.¹ Second, the Act prohibits incidental discrimination, that is, an act that results in making property

¹ See *Martin v. Constance*, 843 F.Supp. 1321 (E.D.Mo.1994).

unavailable to a handicapped person.² 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.³

In *Dornbach*, 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 court found the record in *Dornbach* did show that by enforcing the restriction in question, incidental discrimination results since the residence was made unavailable for the handicapped.⁴ Also, the public policy as stated in s. 419.001(2) and s. 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.” Therefore, the court found that refusal to waive enforcement of the deed restrictions at issue is to refuse to offer a reasonable accommodation, which violates the Florida Fair Housing Act.⁵

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There may be a fiscal impact on the respective agencies which are required by this CS to maintain a comprehensive list of community residential homes.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In 1989, HB 1269 (Chapter 89-372 L.O.F.) established the framework for what is currently s. 419.001, F.S. These provisions followed a deinstitutionalization model to encourage the placement of persons with special needs in the least restrictive setting available and to place such individuals in community residential homes whenever possible. This change afforded the opportunity for Florida’s disabled citizens to live as all other residents of the state.

² See *id.*

³ See *Advocacy Ctr. for Persons with Disabilities, Inc. v. Woodlands Estates Ass’n*, 192 F.Supp.2d 1344 (M.D.Fla.2002).

⁴ See *Rhodes v. Palmetto Pathway Homes, Inc.*, 303 S.C. 308, 400 S.E.2d 484 (1991).

⁵ See *Dornbach*, 854 So.2d 211, citing *Advocacy Ctr.*, 192 F.Supp.2d 1344.

Individuals with disabilities are protected from discrimination in buying and renting housing facilities by federal and state regulations. The Americans with Disabilities Act requires that reasonable accommodations be made for persons with disabilities to allow them access to the same facilities as other Americans, including housing. Additionally, the Fair Housing Amendments Act of 1988 added individuals with disabilities to the class of individuals protected from discrimination in housing.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
