HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 351 CS Community Residential Homes
SPONSOR(S): Lopez-Cantera
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 1006

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Future of Florida's Families Committee	6 Y, 2 N, w/CS	Davis	Collins
2) Elder & Long-Term Care Committee	6 Y, 0 N	DePalma	Walsh
3) Growth Management Committee	9 Y, 0 N, w/CS	Strickland	Grayson
4) Health & Families Council		Davis	Moore
5)			

SUMMARY ANALYSIS

House Bill 351 CS amends existing law relating to community residential homes to prevent the location of such facilities within 1,000 feet of each other. Specifically, the bill expands the definition of "community residential homes" to include facilities licensed by numerous agencies rather than just the Department of Children and Family Services (DCFS). The included agencies are the Department of Elderly Affairs (DOEA), the Agency for Persons with Disabilities (APD), the Department of Juvenile Justice (DJJ), and the Agency for Health Care Administration (AHCA).

Existing law includes certain notification requirements for community residential homes with seven to fourteen residents. The bill changes the notification requirement to shift the responsibility to notify local government regarding the location of other such facilities from DCFS to the "sponsoring agency" (the entity seeking approval of the facility). Additionally, the bill extends those notification requirements to include facilities with six or fewer residents.

The bill also amends certain terms to carry out the intention of this bill. Specifically, the bill deletes the definition of "department" which in existing law is defined to mean the DCFS and replaces it with the terms "licensing entity" or "licensing entities" as appropriate. The bill defines "licensing entity or licensing entities" as DCFS, DOEA, APD, DJJ, or AHCA.

Further, the bill amends the reference to "district administrator," which applies only to DCFS in existing law, and replaces it with "licensing entity" and "sponsoring agency" where applicable, to conform to the expansion of the definition of "community residential home" and the shifted notification responsibilities.

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 Americans with Disabilities Act (ADA), and the Fair Housing Act.

The bill does not appear to have a fiscal impact on state or local governments.

The effective date of this bill is July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: This bill increases the notification responsibility of the sponsoring agency of a community residential home and of four governmental entities.

Promote personal responsibility: This bill requires the sponsoring agency to provide the most recently compiled data to the local government for a community residential home with six or fewer residents. To the extent that the required provision of data by a sponsor of a community residential home to a local government potentially makes the siting of a home more difficult or limits availability of such homes, there could be an effect on choices and alternatives for residents of community residential homes.

B. EFFECT OF PROPOSED CHANGES:

Effect of Proposed Changes

This bill amends ch. 419, F.S., relating to "community residential homes" to prevent the location of such homes within 1,000 feet of each other.

Definition of "community residential homes": The bill expands the definition of "community residential home" to include dwelling units that serve clients of the Department of Elderly Affairs (DOEA), the Agency for Persons with Disabilities (APD), the Department of Juvenile Justice (DJJ), or a dwelling unit licensed by the Agency for Health Care Administration (AHCA). Under existing law, the definition only includes licensed dwelling units serving clients of the Department of Children and Family Services (DCFS).

Definition of "licensing entity or licensing entities": The bill defines "licensing entity or licensing entities" as DCFS, DOEA, APD, DJJ, or AHCA.

References to "department": The bill deletes the definition of "department" which in existing law is defined to mean the DCFS. The bill replaces the term "department" with "licensing entity," "licensing entities," or "sponsoring agency" as may be applicable to reflect the expanded definition of "community residential homes" and the responsible entities. "Licensing entity or licensing entities" is defined above. "Sponsoring agency" is defined in existing law as "an agency or unit of government, a profit or nonprofit agency, or any other person or organization which intends to establish or operate a community residential home."

Required notification: The bill also amends existing law to extend the required local government notification to apply to an agency sponsoring a community residential home of six or fewer residents. Existing law requires notification for proposed "community residential homes" of 7 to 14 residents. The bill requires that, prior to occupancy, the sponsoring agency provide certain data to the local government where the community residential home is proposed to be located. The required data is the most recently published data compiled that identifies all community residential homes in the district in which the proposed site is located. This data is supplied in order to show that no other community residential home with six or fewer residents is within a radius of 1,000 feet of the proposed home. The purpose of this change is to eliminate the clustering of community residential homes with six or fewer residents within a community.

Under existing law, notification to the local government is bifurcated between the sponsoring agency and the department (DCFS). The bill now requires that the sponsoring agency provide local government with "the most recently published data compiled that identifies all community residential

homes in the district in which the proposed site is to be located." Under existing law, either the sponsoring agency or licensing entity is required to provide such notice. The bill now requires that the sponsoring agency must notify the local government that the home is licensed.

Under existing law, a statement of the need for the community residential homes must be supplied by the "district administrator" of DCFS. The term "district administrator" is amended to "licensing entity" and "sponsoring agency" where applicable to conform to the expansion of the definition of "community residential homes." Further, the bill removes the requirement of the "licensing entity" to provide a statement of need to the local government for a "community residential home" as not all of the governmental entities now identified in the bill conduct a needs assessment.

Background

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 1980s 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, House Bill 1269 (chapter 89-372, L.O.F.) established the framework for what is currently section 419.001, Florida Statutes. 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, section 419.001, Florida Statutes, requires the local government to approve the location of certain residential homes which provide for a living environment for seven to fourteen 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.

In January 2004, the DCFS reported that over 5,000 individuals with developmental disabilities lived in foster care facilities and group home facilities licensed by DCFS 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), Florida Statutes, defines a "resident" as a:

- "Frail elder" pursuant to section 400.618, Florida Statutes, 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 section 760.22(7)(a), Florida Statutes, which includes a person who 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 section 393.063, Florida Statutes, 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 section 394.455(18), Florida Statutes, 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 section 39.01(14), Florida Statutes, and a "child" in need of services pursuant to sections 984.03(9) and 985.03(8), Florida Statutes.

Section 393.062, Florida Statutes, 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."

C. SECTION DIRECTORY:

Section 1: Amends s. 419.001(1) and (2), F. S., regarding site selection of community residential homes.

Section 2: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill could potentially restrict the ability of private organizations to provide cost-effective residential homes to certain residents because of the added requirement to furnish data to the local government prior to occupancy.

D. FISCAL COMMENTS:

None.

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 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 court held that enforcing deed restrictions 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, “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 a person residing in or intending to reside in that dwelling after it is sold, rented, or made available.” The statute states further that discrimination is also defined 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), Florida Statutes and in section 393.062, Florida Statutes, 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. (M.D. Fla. 2002)

In July 1999, the U.S. Supreme Court 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 any additional rulemaking authority to the identified departments and agencies; however, the entities have sufficient rulemaking authority in existing law to carry out current licensing functions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

The bill as amended appears to resolve previously identified drafting issues and comments provided to the first committee of reference concerning the original filed version of the bill.

Other Comments

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On January 11, 2006, the Future of Florida's Families Committee adopted a Committee Substitute. The Committee Substitute changed the notification requirement for sponsoring agencies at the time of home occupancy to state that the sponsoring agency or the licensing entity rather than the DCFS must notify the local government that the home is licensed by the department. The need for this change stems from the fact that more than one state agency licenses community residential homes, so to single out DCFS inaccurately reflects the current licensing situation.

On February 7, 2006, the Growth Management Committee adopted a Committee Substitute (CS). The CS replaces references to the "department" with "licensing entity," "licensing entities," or "sponsoring agency" where applicable throughout the chapter to conform to the expansion of the definition of "community residential home" and the deletion of the definition of "department." The CS also provides a definition for the terms "licensing entity or licensing entities." Additionally, the CS shifts the burden of notification for a proposed "community residential home" solely to the "sponsoring agency." Further, the CS removes the requirement of the "district administrator" to provide a statement of need to the

local government for a “community residential home” to conform with the inclusion of governmental entities now identified in the bill that are not currently required to conduct a needs assessment. The CS also replaces the term “district administrator,” which applies only to DCFS, with “licensing entity” and “sponsoring agency” where applicable throughout the chapter to conform to the expansion of the definition of “community residential home.” The CS replaces the references to “district” with “within the jurisdictional limits of the local government” to define the area to be addressed by the required notification.