

HOUSE OF REPRESENTATIVES STAFF ANALYSIS - Revised

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

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Future of Florida's Families Committee	7 Y, 0 N, w/CS	Davis	Collins
2) Growth Management Committee		Grayson	Grayson
3) Health Care Appropriations Committee			
4) Health & Families Council			
5) _____			

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**SUMMARY ANALYSIS**

HB 107 amends the statutory provision relative to Community Residential Homes with six or fewer residents. This change requires that prior to occupancy, the sponsoring agency must provide the local government with the most recently published data compiled that identifies all community residential homes in the district in which the proposed site is located in order to show that no other community residential home is within a radius of 1,000 feet of the proposed home with six or fewer residents. Currently, Community Residential Homes with 7-14 residents must provide this information but not Community Residential Homes with six or fewer residents.

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 bill does not appear to have a state fiscal impact.

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 the sponsoring agency to provide the most recently compiled data to the local government for a community residential home with six or fewer residents. The bill increases responsibility for a sponsoring agency to create a community residential home with six or fewer residents as they will have to provide the local government with the most recently compiled data.

**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 does potentially decrease the empowerment of families. Self support and management of ones life could be made potentially more difficult as the local government will be given more authority to potentially restrict the creation of community residential homes with six or fewer residents.

#### B. EFFECT OF PROPOSED CHANGES:

##### Effect of Proposed Changes

This bill amends existing law to add to the required local government notification provisions applicable to an agency sponsoring a community residential home of six or fewer residents.

The bill requires that prior to occupancy, such sponsoring agency provide the local government with the most recently published data compiled that identifies all community residential homes in the district in which the proposed site is located 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.

Previously, the sponsoring agency or the Department of Children and Family Services was required only at the time of occupancy to notify local government that the home was licensed by the department. Now in addition to the "prior to occupancy" requirement addressed above, the licensing notification responsibility lies only with the sponsoring agency.

##### 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 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.

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. “

C. SECTION DIRECTORY:

Section 1. Amends s. 419.001(2), F.S.

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:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill could 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 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, including the Agency for Persons with Disabilities, the Department of Juvenile Justice, and the Agency for Health Care Administration. 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. This bill will potentially help avoid this problem by placing with the sponsoring agency the responsibility to provide the most recently published complied data concerning showing that no other community residential home of six or fewer residents is located within 1000 feet of the proposed home.

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

On February 9, 2005, the Future of Florida's Families Committee adopted one amendment to HB 107 and passed the bill as a Committee Substitute by a vote of 7-0. The original bill required local government notification of Department of Children and Family Services licensing, at the time of occupancy, in order to locate certain community residential homes (six or fewer residents) in a single family or multifamily-zoned area. The Committee Substitute provides that prior to occupancy, the sponsoring agency must provide the local government with the most recently published data compiled that identifies all community residential homes in the district in which the proposed site is located in order to show that no other community residential homes are within a radius of 1,000 feet of the home with six or fewer residents.