

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 645

Community Residential Homes

SPONSOR(S): Stargel

TIED BILLS:

IDEN./SIM. BILLS: SB 1166

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Military & Local Affairs Policy Committee	9 Y, 4 N, As CS	Rojas	Hoagland
2)	Health & Family Services Policy Council		Schoolfield	Gormley
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

Chapter 419, F.S., provides the statutory framework for site selection of community residential homes. These homes are licensed to serve residents who are clients of the Department of Elder Affairs (DOEA), the Agency for Persons with Disabilities (APD), the Department of Juvenile Justice (DJJ), the Department of Children and Family Services (DCF), or the Agency for Health Care Administration (AHCA). These homes provide a living environment for seven to fourteen 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.

Committee Substitute for House Bill 645 amends s. 419.001(1), F.S., to define a "planned residential community" as a planned unit development which is:

- under unified control;
- planned and developed as a whole;
- has a minimum gross lot area of 10 acres; and
- has amenities that are designed to serve residents with a developmental disability; but
- which may also provide housing options for other individuals; and
- residents may enjoy unrestricted freedom of movement within and outside of the community.

The bill establishes that local government approval must be based on criteria that includes, but is not limited to, compliance with appropriate land use, zoning, and building codes. The bill prohibits the local government from basing approval on proximity limitations based upon the type of residents the planned unit development is anticipated to serve.

The bill creates s. 419.001(4), F.S., which provides that homes that have six or fewer residents that would otherwise meet the definition of a community residential home and that is within a planned residential community are not subject to the proximity limitations of s. 419.001, F.S., which restrict placement to no closer than 1,000 foot radius from a similar home.

The bill appears to have no fiscal impact on state or local government.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Chapter 89-372, F.O.F., established the framework for what is currently s. 419.001, F.S. Its purpose 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 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.

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 seven to fourteen unrelated residents. When a site for a community residential home has been selected by a sponsoring agency¹ in an area zoned for multifamily use, the agency must notify the Chief Executive Officer of the local government in writing. The local government then has up to 60 days to respond. 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 are deemed a single family unit and do not require approval by the local government, provided that the home does not exist within a 1,000 feet radius of another six or fewer resident home.

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

- "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.
- "Frail elder" pursuant to s. 429.65(9), 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.

¹ s. 419.001(1)(e), F.S., defines "sponsoring agency" 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."

- 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, F.S., intoxication, or conditions manifested only by antisocial behavior or substance abuse impairment.
- “Child” who is found to be dependent by the court pursuant to ss. 39.01(14), and 984.03 F.S., and a “child” in need of services pursuant to ss. 984.03(9) and 985.03(8), F.S.

Effect of Proposed Changes

Committee Substitute for House Bill 645 amends s. 419.001(1), F.S., to define a “planned residential community” as a planned unit development which is:

- under unified control;
- planned and developed as a whole;
- has a minimum gross lot area of 10 acres; and
- has amenities that are designed to serve residents with a developmental disability; but
- which may also provide housing options for other individuals; and
- residents may enjoy unrestricted freedom of movement within and outside of the community.

The bill establishes that local government approval must be based on criteria that includes, but is not limited to, compliance with appropriate land use, zoning, and building codes. The bill prohibits the local government from basing approval on proximity limitations based upon the type of residents the planned unit development is anticipated to serve.

The bill creates s. 419.001(4), F.S., which provides that homes that have six or fewer residents that would otherwise meet the definition of a community residential home, and that are within a planned residential community, are not subject to the proximity limitations of s. 419.001, F.S. This means that if a home within a planned residential community will not be subject to the proximity requirements that would be otherwise enforceable on homes outside the planned residential community, if such limitations are based solely on the types of residents anticipated to be living in the community.

The practical effect of the bill is to allow the planning and development of special needs communities in areas adjacent to residential areas.

The bill also amends s. 393.501(2), F.S., creating an exception within the rulemaking authority of the Agency for Persons with Disabilities. The exception provides that there is no restriction on the number of facilities designated as community residential homes located within a planned residential community as defined by s. 419.001(1), F.S.

B. SECTION DIRECTORY:

- Section 1.** Amends s. 393.501(2), F.S., relating to rulemaking.
- Section 2.** Amends s. 419.001, F.S., relating to site selection of community residential homes..
- Section 3.** Provides an effective date of July 1, 2010.

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:

None

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill amends s. 393.501(2), F.S., to restrict the rulemaking authority of the Agency for Persons with Disabilities.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The term "under unified control" is ambiguous and may need to be clarified as to what is intended to be achieved. Similarly the language "residents may enjoy unrestricted freedom of movement" is drafted in the permissive form and may not achieve the intended effect.

Proponents of the bill emphasize that this would not be an institutional setting, since other adults, including family members, friends, and other caregivers may also live in the community. Qualifying persons will still be eligible for supported living services, and proponents advocate that these "planned residential communities" would allow the service providers better access to their clients and save the state money by not requiring the providers to drive further distances to their clients.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 25, 2010, HB 645 was amended in the Military & Local Affairs Policy Committee upon adoption of one amendment. The analysis reflects the bill as amended. Specifically, the amendment does the following:

- Modifies the definition of planned community development to require that the development be under unified control.
- Modifies the definition of planned community development to include minimum acreage requirements
- Modifies the definition of planned community development to state that residents may enjoy unrestricted freedom of movement within and outside of the community.
- Requires that a planned residential community must comply with the applicable local government's land development code and other local ordinances.
- Prohibits a local government from imposing proximity limitations between homes within a planned residential community if such limitations are based solely on the types of residents anticipated to be living in the community.