

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/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	10 Y, 4 N, As CS	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.

CS/CS/HB 645 amends s. 419.001(1), F.S., to define a "planned residential community" as a local government approved planned unit development which is:

- under unified control;
- planned and developed as a whole;
- has a minimum gross lot area of 8 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 also amends the definition of "community residential home" to include a dwelling unit that operates as a sober house-transitional living home that is established July 1, 2010 or thereafter. The bill defines "sober house-transitional living home" as a community residential home that:

- provides a peer supported and managed alcohol and drug-free living environment for no more than 6 unrelated residents that are recovering from substance abuse;
- is supervised by a house manager; and
- requires residents to pay weekly or monthly rent and other expenses associated with living and treatment.

This will limit future sober house-transitional living homes from being established within 1,000 feet of another community residential home.

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.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: 4/13/2010

## 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, L.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 agency<sup>1</sup> 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.

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<sup>1</sup> 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.

The Florida Fair Housing Act in s. 760.23(3), F.S., provides that it is unlawful to make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, national origin, sex, handicap, familial status, or religion or an intention to make any such preference, limitation, or discrimination.

Also, s. 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 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.

### **Effect of Proposed Changes**

CS/CS/HB 645 amends the definition of “community residential home” in s. 419.001(1), F.S., to include a dwelling unit that operates as a sober house-transitional living home that is established July 1, 2010 or thereafter. The bill defines “sober house-transitional living home” as a community residential home that:

- provides a peer supported and managed alcohol and drug-free living environment for no more than 6 unrelated residents that are recovering from substance abuse and are actively participating in licensed substance abuse treatment, non-licensed peer support services, or are transitioning back in the community from residential treatment programs or incarceration;
- is supervised by a house manager; and
- requires residents to pay weekly or monthly rent and other expenses associated with living and engaging in recovery activities.

The effect of adding sober house-transitional living homes to the community residential home definition in s. 419.001, F.S., will prevent homes established after July 1, 2010 with six or fewer residents from being sited less than 1,000 feet from another community residential home. Homes of this type of housing from 7 to 14 residents will need to obtain local government approval before they are established. This change is intended to exempt existing sober house-transitional living homes already sited in the community prior to July 1, 2010.

The bill defines a “planned residential community” as a local government approved planned unit development which is:

- under unified control;
- planned and developed as a whole;
- has a minimum gross lot area of 8 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 this change is to allow the planning and development of special needs communities in areas adjacent to residential areas and to allow community residential homes within these communities to be sited next to each other or less than 1,000 feet apart.

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. The effect of this change will require the Agency for Persons with Disabilities to amend existing rules which place restrictions on the siting of certain homes/facilities licensed by the agency.<sup>2</sup> This would permit homes within planned residential communities as defined in this bill to be licensed by the agency. Further, residents of homes within these communities, who are enrolled in the Medicaid waiver program would be able to receive Medicaid waiver funding if they are in a licensed residential facility approved for the waiver program.<sup>3</sup>

#### 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

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<sup>2</sup> 65G-2.015, FAC.

<sup>3</sup> Florida Medicaid Developmental Disabilities Waiver Services Coverage and Limitations Handbook incorporated in 59G-8.083, FAC

### 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.

The implementation of planned residential communities for developmentally disabled individuals could present challenges in order to comply with s. 760.23(3), F.S. in the Florida Fair Housing Act. This section prohibits the printing, making, or publishing any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates preference based on handicap.

### 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. 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.

On April 13, 2010, CS/HB 645 was amended in the Health & Family Services Policy Council upon adoption of one amendment. This analysis reflects the bill as amended. Specifically, the amendment does the following:

- Modifies the definition of “community residential home” to include dwelling units operating as sober houses-transitional living homes” that are established July 1, 2010 or thereafter.
- Defines “sober house-transitional living home” to mean a community residential home that provides a peer supported and managed alcohol and drug-free living environment for no more than 6 unrelated residents that are recovering from substance abuse.
- Modifies the definition of “planned residential community” to mean a local government approved planned unit development, rather than just a planned unit development.
- Modifies the gross lot area of a “planned residential community” from 10 to 8 acres.