

# 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.)

BILL: CS/SB 218

SPONSOR: Commerce and Economic Opportunities Committee and Senator Cowin

SUBJECT: Rights of Physically Disabled Persons

DATE: December 5, 2001      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gillespie</u>	<u>Maclure</u>	<u>CM</u>	<u>Favorable/CS</u>
2.	<u>Gordon</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

Committee Substitute for Senate Bill 218 extends the right of the disabled to be accompanied in public facilities by specially trained service dogs to persons who have epilepsy or other such seizure disorders. The committee substitute also imposes criminal penalties against anyone who denies or interferes with the admittance to, or enjoyment of, a public facility by persons who are subject to epilepsy or other such seizure disorders and who are accompanied by a service dog.

This committee substitute substantially amends section 413.08, Florida Statutes.

**II. Present Situation:**

**Florida's Right of Disabled Persons to be Accompanied by a Dog Guide or Service Dog**

Under current law, a deaf or hard of hearing person, totally or partially blind person, or physically disabled person has the right to be accompanied in public facilities by a dog guide or service dog that is specially trained for that purpose (s. 413.08(1), F.S.). These public facilities include:

- **Transportation:** Common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats, and other public conveyances or modes of transportation.
- **Lodging and Other Public Places:** Hotels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited.

The current law requires that a dog guide or service dog be capable of being properly identified as being from a recognized school for seeing-eye dogs, hearing-ear dogs, service dogs, or guide dogs. A public facility must permit dog guides or service dogs to accompany a disabled person,

but may not impose an extra charge on the disabled person for the dog. A disabled person is liable for any damage done by his or her dog to the premises of the public facility.

Any person, firm, or corporation (or the agent of any person, firm, or corporation) who denies or interferes with admittance to, or enjoyment of, the rights of a deaf person, a hard of hearing person, a totally or partially blind person, or an otherwise physically disabled person is subject to criminal prosecution as a misdemeanor of the second degree (s. 413.08(2), F.S.). The maximum penalty for each violation is 60 days in jail and a \$500 fine (ss. 775.082 and 775.083, F.S.). Because current law establishes that being accompanied in public facilities by a dog guide or service dog is a “right,” these criminal penalties would apply when a public facility prohibits a disabled person from being accompanied by his or her dog.

The current law also extends the right to be accompanied by a dog guide or service dog (for deaf or hard of hearing, blind, or mobility impaired persons) to the trainer of a dog while engaged in such training, but also establishes the trainer’s liability for damage done by a dog to a public facility (s. 413.08(7), F.S.). The criminal penalties (misdemeanor of the second degree) also apply when a public facility denies or interferes with admittance to a trainer accompanied by a dog guide or service dog while engaged in such training (s. 413.08(2), F.S.).

Because the current law extends these rights to trainers of dogs only for “deaf or hard of hearing, blind, or mobility impaired persons,” it is unclear to what extent under current law these rights apply to trainers of dogs for partially blind persons or for physically disabled persons who are not “mobility impaired.”

Under current law, a “physically disabled person” is a person who has a “physical impairment that substantially limits one or more major life activities” (s. 413.08(6)(a), F.S.).

### **Epilepsy and Seizure Disorders**

According to the National Institute of Neurological Disorders and Stroke,<sup>1</sup> epilepsy is a brain disorder in which clusters of nerve cells, or neurons, in the brain sometimes signal abnormally.<sup>2</sup> Neurons normally generate electrochemical impulses that act on other neurons, glands, and muscles to produce human thoughts, feelings, and actions. In epilepsy, the normal pattern of neuronal activity becomes disturbed, causing attacks of strange sensations, emotions, and behavior, or sometimes convulsions, muscle spasms, and loss of consciousness. These attacks are known as seizures. During a seizure, neurons may fire as many as 500 times a second, much faster than the normal rate of about 80 times a second. In some people, this happens only occasionally; for others, it may happen up to hundreds of times a day.

More than 2 million people in the United States – about 1 in 100 – have experienced an unprovoked seizure or been diagnosed with epilepsy. There are many different kinds of epilepsy.

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<sup>1</sup> The National Institute of Neurological Disorders and Stroke is an institute of the National Institutes of Health within the United States Department of Health and Human Services.

<sup>2</sup> See National Institute of Neurological Disorders and Stroke, *Seizures and Epilepsy: Hope Through Research*, at [http://www.ninds.nih.gov/health\\_and\\_medical/pubs/seizures\\_and\\_epilepsy\\_htr.htm](http://www.ninds.nih.gov/health_and_medical/pubs/seizures_and_epilepsy_htr.htm) (last visited Nov. 26, 2001); *Stedman’s Medical Dictionary* 605-07 & 1614-15 (Maureen Barlow Pugh ed., 27th ed., Lippincott Williams & Wilkins 2000).

Doctors have identified hundreds of different epilepsy syndromes – disorders characterized by a specific set of symptoms that include epilepsy. Some of these syndromes appear to be hereditary. For other syndromes, the cause is unknown. Epilepsy syndromes are frequently described by their symptoms or by where in the brain they originate. For about 80 percent of those diagnosed with epilepsy, seizures can be controlled with modern medicines and surgical techniques. About 20 percent of people with epilepsy, however, will continue to experience seizures even with the best available treatment. Having a seizure does not necessarily mean that a person has epilepsy. Only when a person has had two or more seizures is he or she considered to have epilepsy.

Just as there are many different kinds of epilepsy, more than 30 different types of seizures have been identified, and these types are generally divided into two major categories – partial seizures and generalized seizures.<sup>3</sup>

Partial seizures occur in just one part of the brain. About 60 percent of people with epilepsy have partial seizures. These seizures are frequently described by the area of the brain in which they originate. For example, someone might be diagnosed with partial frontal lobe seizures. In a simple partial seizure, the person will remain conscious but may experience unusual feelings or sensations that can take many forms. The person may experience sudden and unexplainable feelings of joy, anger, sadness, or nausea. He or she also may hear, smell, taste, see, or feel things that are not real.

In a complex partial seizure, the person has a change in or loss of consciousness. His or her consciousness may be altered, producing a dreamlike experience. People having a complex partial seizure may display strange, repetitious behaviors such as blinks, twitches, mouth movements, or even walking in a circle. These repetitious movements are called automatisms. They also may fling objects across the room or strike out at walls or furniture as though they are angry or afraid. These seizures usually last just a few seconds.

Some people with partial seizures, especially complex partial seizures, may experience auras – unusual sensations that warn of an impending seizure. These auras are actually simple partial seizures in which the person maintains consciousness. The symptoms an individual person has, and the progression of those symptoms, tend to be stereotyped, or similar every time.

Generalized seizures are a result of abnormal neuronal activity in many parts of the brain. These seizures may cause loss of consciousness, falls, or massive muscle spasms. There are many kinds of generalized seizures. In absence seizures, the person may appear to be staring into space or have jerking or twitching muscles. These seizures are sometimes referred to as *petit mal* seizures, which is an older term. Tonic seizures cause stiffening of muscles of the body, generally those in the back, legs, and arms. Clonic seizures cause repeated jerking movements of muscles on both sides of the body. Myoclonic seizures cause jerks or twitches of the upper body, arms, or legs. Atonic seizures cause a loss of normal muscle tone. The affected person will fall down or may nod his or her head involuntarily. Tonic-clonic seizures cause a mixture of symptoms, including stiffening of the body and repeated jerks of the arms and/or legs as well as loss of consciousness. Tonic-clonic seizures are sometimes referred to by an older term: *grand mal* seizures.

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<sup>3</sup> See *id.*

Not all seizures can be easily defined as either partial or generalized. Some people have seizures that begin as partial seizures but then spread to the entire brain. Other people may have both types of seizures but with no clear pattern.

### **Seizure-Response and Seizure-Alert Dogs**

According to the Epilepsy Foundation, there are two types of service dogs that are trained or that learn to respond to or warn of an impending seizure in someone who has epilepsy: “seizure-response dogs” respond to a person who is having a seizure; “seizure-alert dogs” appear to know when a seizure is going to occur.<sup>4</sup>

A seizure-response dog might be trained to bark when a child has a seizure so that family members know when a seizure is occurring, or might lie next to the person having a seizure to keep him or her from harm, or might be trained to activate some kind of pre-programmed device such as a pedal that rings an alarm. A seizure-alert dog might go through a number of actions that are different from its usual activities if it senses that its owner is going to have a seizure. Pawing, running in circles, coming and sitting close by, even barking directly at the person have been reported.

The Epilepsy Foundation cites the work of a British neuropsychiatrist and epilepsy specialist, Dr. Stephen W. Brown, and a behavioral scientist and animal trainer, Val Strong.<sup>5</sup> According to the foundation, these scientists reported in 1999 in the *European Journal of Epilepsy Seizure* that, working with people with epilepsy and dogs together, they were able to train some of the dogs to warn of seizures. The training was based on reward-based operant conditioning – that is, the dogs got a reward every time their owners had seizures. After training, the dogs were sometimes able to give warning as much as 15 to 45 minutes before the actual seizure occurred. The way the dogs behaved took different forms, from pawing in a special way to simply approaching the person and barking.

### **Service Animals and Epilepsy under the Americans with Disabilities Act**

Under the federal regulations adopted by the United States Department of Justice (USDOJ) to implement the federal Americans with Disabilities Act of 1990 (ADA), a public accommodation is required to allow persons with disabilities to be accompanied by a service animal. *See* 28 C.F.R. s. 36.302(c):

(c) *Service animals* – (1) *General*. Generally, a public accommodation shall modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability.

(2) *Care or supervision of service animals*. Nothing in this part requires a public accommodation to supervise or care for a service animal.

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<sup>4</sup> *Questions and Answers about Seizure Dogs*, EpilepsyUSA (Epilepsy Foundation), at <http://www.epilepsyfoundation.org/epusa/seizuredogs.html> (last visited Nov. 26, 2001).

<sup>5</sup> *All About Seizure Dogs*, EpilepsyUSA (Epilepsy Foundation), at <http://www.epilepsyfoundation.org/epusa/aboutseizuredogs.html> (last visited Nov. 26, 2001).

(Emphasis in original.)

These regulations define a service animal as “any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items” (28 C.F.R. s. 36.104).

According to the USDOJ, “privately owned businesses that serve the public, such as restaurants, hotels, retail stores, taxicabs, theaters, concert halls, and sports facilities, are prohibited from discriminating against individuals with disabilities. The ADA requires these businesses to allow people with disabilities to bring their service animals onto business premises in whatever areas customers are generally allowed.”<sup>6</sup> These provisions are enforced in several ways. A disabled person may file a complaint with the USDOJ or may file a civil suit against the privately owned business. When there is a pattern or practice of discrimination, the USDOJ may also initiate lawsuits. Other federal laws and regulations address public accommodation in public transportation, housing, airplanes, and other circumstances.

The federal regulations implementing the ADA define disability as “a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment” (28 C.F.R. s. 36.104).<sup>7</sup> As used in this definition, epilepsy is specifically included in the regulation as being included in the phrase “physical or mental impairment.” Moreover, the phrase “major life activities” is further defined to mean “functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.” *Id.*

Read together, these definitions provide that epilepsy is covered under the ADA if an individual’s epileptic syndrome substantially limits one or more of the major life activities of the individual. This reading is consistent with a 1999 ruling by the United States Supreme Court in which the ADA was interpreted to require that corrective and mitigating measures be considered in determining whether an individual is substantially limited in major life activity. *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999). In *Sutton*, the court held that severely myopic applicants, who were denied positions as global airline pilots because they failed to meet the airline’s minimum visual requirements, were not disabled within the meaning of the ADA, because the applicants could fully correct their visual impairment with corrective lenses. In dicta, the court addressed how the ADA should be applied to persons who take medication for an impairment, such as epilepsy:

The dissents suggest that viewing individuals in their corrected state will exclude from the definition of “disab[led]” those who . . . take medicine for epilepsy or high blood pressure [citation omitted]. This suggestion is incorrect. The use of a corrective device does not, by itself, relieve one’s disability. Rather, one has a disability . . . if, notwithstanding the use of a corrective device, that individual is

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<sup>6</sup> Civil Rights Division, U.S. Dep’t of Justice, *Commonly Asked Questions About Service Animals in Places of Business*, at <http://www.usdoj.gov/crt/ada/animal.htm> (last modified July 1996).

<sup>7</sup> See also 42 U.S.C.A. s. 12102(2) (the regulation closely tracks the language of the ADA).

substantially limited in a major life activity. . . . The same may be true of individuals who take medicine to lessen the symptoms of an impairment so that they can function but nevertheless remain substantially limited. . . . The use or nonuse of a corrective device does not determine whether an individual is disabled; that determination depends on whether the limitations an individual with an impairment *actually* faces are in fact substantially limiting.

*Id.* at 527 U.S. 487-88 (emphasis in original).

Thus, under the ADA, a person with epilepsy or other such seizure disorders would be considered “disabled,” thereby having a right to be accompanied by a service animal under federal law, only if the person’s epileptic syndrome substantially limited one or more of the major life activities of the individual.

### **Epilepsy and Dog Guides or Service Dogs under Florida Law**

According to the Florida Department of Health, an estimated 1 percent of the population has epilepsy. Thus, according to the department, more than 145,000 people in Florida have epilepsy.<sup>8</sup> Epilepsy is defined in Florida law as “a chronic brain disorder of various causes which is characterized by recurrent seizures due to excessive discharge of cerebral neurons” (ss. 393.063(19) and 400.960(10), F.S.).

In s. 385.207, F.S., the Legislature recognized epilepsy as “a developmental disability and a handicapping condition.” The statute expresses the Legislature’s intent that “persons with epilepsy are entitled to the protection and benefits available to all persons through the equal and nondiscriminatory application and implementation of statutes, rules, programs, and services.” The statute also created a program for the care and assistance of persons with epilepsy within the Florida Department of Health.

Moreover, the Legislature established that epilepsy is considered a secondary disability for which an individual is eligible to receive services under ch. 393, F.S. (developmental disabilities) and part XI of ch. 400, F.S. (intermediate care facilities for developmentally disabled persons). For these programs, however, epilepsy is only considered a disability when found concurrently with retardation, autism, or cerebral palsy (ss. 393.063(19) and 400.960(10), F.S.).

As discussed above, a “physically disabled person” has a statutory right to be accompanied in public facilities by a dog guide or service dog that is specially trained for that purpose (s. 413.08(1)(b) and (6)(a), F.S.). Historically, a person with epilepsy has been considered a “physically disabled person” under s. 413.08, F.S., as demonstrated by a 1973 opinion of the Florida Attorney General, which concluded that epilepsy is a physical disability under s. 413.08(3), F.S., for purposes of prohibiting certain employment discrimination on the basis of a disability.<sup>9</sup> Today, the statute defines the term “physically disabled person” to mean a person who has a “physical impairment that substantially limits one or more major life activities”

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<sup>8</sup> Florida Dep’t of Health, *Epilepsy: Frequently Asked Questions*, at <http://www.doh.state.fl.us/family/epilepsy/FAQ.html> (last visited Nov. 26, 2001).

<sup>9</sup> Op. Att’y Gen. Fla. 73-317 (1973).

(s. 413.08(6)(a), F.S.). Although the phrase “physical impairment” is not further defined in Florida law, because the term closely tracks the language of the federal ADA, epilepsy would most likely be included within the phrase “physical impairment” under state law. Accordingly, under a similar interpretation to the rationale used in *Sutton*, an individual with epilepsy would appear to have a statutory right to be accompanied in public facilities by a dog guide or service dog under current state law only if the individual’s epileptic syndrome substantially limits one or more major life activities.

### III. Effect of Proposed Changes:

The committee substitute extends the right of the disabled to be accompanied in public facilities by specially trained service dogs to persons afflicted with epilepsy or other such seizure disorders. When exercising this right, the service dog must be capable of being properly identified as being from a recognized school for service dogs, including, but not limited to, seizure-alert and seizure-response dogs. The committee substitute prohibits a public facility from imposing an extra charge for a seizure-alert or seizure-response dog. Further, the committee substitute establishes that a person who is subject to epilepsy or other such seizure disorders is liable for any damage done by his or her service dog to the premises of a public facility.

The committee substitute extends the criminal penalties under current law (which enforce the rights of a deaf person, a hard of hearing person, a totally or partially blind person, or an otherwise physically disabled person) to enforce the right of a person who is subject to epilepsy or other such seizure disorders to be accompanied by a service dog in a public facility. Under the committee substitute, any person, firm, or corporation (or the agent of any person, firm, or corporation) who denies or interferes with admittance to, or enjoyment of, the right of a person who is subject to epilepsy or other such seizure disorders to be accompanied by a service dog in public facilities is subject to criminal prosecution as a misdemeanor of the second degree. The maximum penalty for each violation is 60 days in jail and a \$500 fine.

In effect, the committee substitute would extend the right of a physically disabled person to be accompanied by a service dog to a person who is subject to epilepsy or other such seizure disorders, but who is not considered a “physically disabled person” under current law because his or her epileptic syndrome does not substantially limit one or more major life activities. Another practical effect of the committee substitute is that, by specifying epilepsy and other such seizure disorders in the clear language of the statute, the statute would cease to be subject to interpretation as to what extent epilepsy is included within the term “physically disabled person.”

The committee substitute extends to the trainer of a seizure-alert or seizure-response dog the right granted under current law for the trainer of a dog guide or service dog for disabled persons to be accompanied by the dog while engaged in such training. The committee substitute also establishes the trainer’s liability for damage done by a dog to a public facility. Further, the criminal penalties (misdemeanor of the second degree) also apply when a public facility denies or interferes with admittance to a trainer accompanied by a seizure-alert or seizure-response dog while engaged in such training.

As discussed in the Present Situation section of this analysis, the current law extends rights to trainers of dog guides and service dogs only for “deaf or hard of hearing, blind, or mobility

impaired persons,” but it is unclear to what extent under current law these rights apply to trainers of dogs for partially blind persons or for physically disabled persons who are not “mobility impaired.” In the provision extending these rights to trainers of seizure-alert and seizure-response dogs, the committee substitute clarifies the current law by applying these rights to trainers of dogs for “[e]very deaf or hard of hearing person, totally or partially blind person, person who is subject to epilepsy or other such seizure disorders, or physically disabled person.”

In addition to the substantive provisions of the committee substitute, the committee substitute also makes technical changes throughout s. 413.08, F.S.

The committee substitute provides an effective date of July 1, 2002.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

The committee substitute requires public facilities, including transportation, lodging, and other public places, to allow persons subject to epilepsy or other such seizure disorders (and trainers of seizure-alert or seizure-response dogs) to be accompanied in the public facility by a service dog. The committee substitute does not appear to impose any economic impacts on the private sector. Further, the committee substitute specifically provides that a person is liable for any damage done to the premises of the public facility by his or her service dog.

##### **C. Government Sector Impact:**

The committee substitute provides for enforcement of the right of persons subject to epilepsy or other such seizure disorders (and trainers of seizure-alert or seizure-response dogs) to be accompanied in a public facility by a service dog through criminal prosecution as a misdemeanor of the second degree. Consequently, the committee substitute may cause a marginal increase in caseloads for law enforcement and state



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attorneys responsible for prosecuting complaints against public facilities that fail to comply with the law.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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

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