

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: CS/SB 738

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Clemens

SUBJECT: Substance Abuse Services

DATE: April 1, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	Fav/CS
2.			CA	
3.			AHS	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 738 creates state regulation for the placement and operation of residential facilities, called sober houses, that provide housing to recovering addicts of substance abuse. The bill prohibits sober houses from being located within 1,000 feet of each other and requires sober houses to provide certain information to local governments to ensure compliance with local zoning and occupancy standards.

This bill would create a significant fiscal impact on the state and has an effective date of July 1, 2013.

This bill substantially amends sections 397.311 and 397.403 of the Florida Statutes.

II. Present Situation:

Historically, community housing options for persons with disabilities, frail elderly persons, dependent or delinquent children, and persons with mental illnesses have been limited. Although the transition from providing services in large institutions to community-based programs began in the 1970s, the availability of safe, appropriate, and affordable housing in Florida has been an

ongoing challenge. The “NIMBY” (Not In My Back Yard) syndrome is used to describe the opposition to placing affordable housing or housing for persons with disabilities or special needs in residential neighborhoods. This opposition began to be routinely challenged during the 1980s as policy and practice reform led to the development of more opportunities for persons with disabilities to live independently and participate fully in their communities.

Fair Housing Act

The Federal Fair Housing Act of 1988 (FHA)¹ prohibits discrimination on the basis of a handicap in all types of housing transactions. The FHA defines a “handicap” to mean those mental or physical impairments that substantially limit one or more major life activities. The term “mental or physical impairment” may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness. The term “major life activity” may include seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking, or working. The FHA also protects persons who have a record of such impairment, or are regarded as having such impairment. Current users of illegal controlled substances, persons convicted for illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders are not considered disabled by virtue of that status under the FHA.²

The Florida Fair Housing Act in 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 provides 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.

Community Residential Homes

In 1989, the Florida Legislature enacted ch. 89-372, Laws of Florida, which was codified as ch. 419, F.S. The legislation was aimed at preventing or reducing inappropriate institutional care by encouraging the development of community-based residential environments for persons with special needs. A community residential home is a home consisting of “7 to 14 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.”³

The following are included in the definition of a “resident:”

¹ 42 U.S.C. 3601 *et seq.*

² See U.S. Department of Justice, *The Fair Housing Act*, available at http://www.justice.gov/crt/about/hce/housing_coverage.php (last visited Mar. 23, 2011); see also M.M. Gorman *et al.*, *Fair Housing for Sober Living: How the Fair Housing Act Addresses Recovery Homes for Drug and Alcohol Addiction*, THE URBAN LAWYER v. 42, No. 3 (Summer 2010) (on file with the Senate Committee on Children, Families, and Elder Affairs).

³ Section 419.001(1)(a), F.S.

- “Frail elder” pursuant to s. 429.65, F.S., means a functionally impaired elderly person who is 60 years of age or older and who has physical or mental limitations that restrict the person’s ability to perform the normal activities of daily living and that impede the person’s capacity to live independently.
- Person with a “handicap” pursuant to s. 760.22(7)(a), F.S., means 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, or a person with a developmental disability as defined in s. 393.063, F.S.
- “Developmental disability” pursuant to s. 393.063, F.S., means a person with a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome and which constitutes a substantial handicap that can reasonably be expected to continue indefinitely.
- “Nondangerous mentally ill person” means a person with a “mental illness” as defined in s. 394.455(18), F.S., which is 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...the term does not include retardation or developmental disability as defined in ch. 393, F.S., intoxication, or conditions manifested only by antisocial behavior or substance abuse impairment.
- “Child who is found to be dependent” as defined in s. 39.01(12), F.S., and a “child in need of services” pursuant to ss. 984.03(9) and 985.03(8), F.S.⁴

Section 419.001(3), F.S., requires a sponsoring agency⁵ to notify the chief executive officer of the local government in writing when a site for a community residential home has been selected in an area zoned for multifamily use. The notice must include the address of the site, the residential licensing category, the number of residents, and the community support requirements of the program. The notice must also contain a statement from the licensing entity⁶ indicating the licensing status of the home and how the home meets applicable licensing criteria for the safe care and supervision of the residents. 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 to be located. The local government reviews the notification from the sponsoring agency in accordance with the zoning ordinance of the jurisdiction in which the community residential home is located.

The local government may only deny the siting of a community residential home if the site selected:

- Does not conform to existing zoning laws;
- Does not meet applicable licensing criteria;

⁴ Section 419.001(1)(e), F.S.

⁵ Section 419.001(1)(f), 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.”

⁶ Section 419.001(1)(b), F.S., defines “licensing entity” as the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Juvenile Justice, the Department of Children and Family Services, or the Agency for Health Care Administration, all of which are authorized to license a community residential home to serve residents, as defined in s. 419.001(1)(e), F.S.

- Would substantially alter the nature and character of the area.⁷

A home with six or fewer residents is deemed a single-family unit, and such a home is allowed in a single- or multi-family zoned area without approval by the local government, provided that the home does not exist within a 1,000 foot radius of another home with six or fewer residents and the sponsoring agency notifies the local government at the time of occupancy that the home is licensed.⁸

Americans with Disabilities Act

In July 1999, the U.S. Supreme Court held that the unnecessary institutionalization of people with disabilities is a form of discrimination prohibited by the Americans with Disabilities Act (ADA).⁹ In its opinion, the Court challenged federal, state, and local governments to develop more opportunities for individuals with disabilities through accessible systems of cost-effective community-based services. This decision interpreted Title II of the ADA and its implementing regulation, requiring states to administer their services, programs, and activities “in the most integrated setting appropriate to meet the needs of qualified individuals with disabilities. The ADA and the Olmstead decision apply to all qualified individuals with disabilities regardless of age. A former drug addict may be protected under the ADA because the addiction may be considered a substantially limiting impairment.¹⁰ In addition, in the *United States of America vs. City of Boca Raton*, the court held that the city’s ordinance excluding substance abuse treatment facilities from residential areas violates the FHA because it unjustifiably prohibits these individuals from enjoying the same rights and access to housing as anyone else.¹¹

Sober Houses

Sober houses function under the belief that housing addicts in an environment that fosters recovery, such as low crime, drug free, single family neighborhoods, is essential to the success of any addict’s treatment.”¹² Proponents of sober houses believe that “such environments foster sobriety and encourage trust and camaraderie between home residents.”¹³ Living in a sober house allows a recovering addict the opportunity to develop practical life skills and build self confidence.¹⁴

The facilities, operators, and organizational design of sober houses vary greatly. It is argued that the location of the home is critical to recovery, and placing the home in a single-family neighborhood helps to avoid temptations that other environments can create.¹⁵ Organizationally,

⁷ Section 419.001(3)(c), F.S.

⁸ Section 419.001(2), F.S.

⁹ *Olmstead v. L.C.*, 527 U.S. 581, (1999).

¹⁰ U.S. Commission on Civil Rights, *Sharing the Dream: Is the ADA Accommodating All?* available at http://www.usccr.gov/pubs/ada/ch4.htm#_ftn12 (last visited March 26, 2013).

¹¹ *United States of America vs. City of Boca Raton* 2008 WL 686689 (S.D.Fla. 2008).

¹² M.M. Gorman *et al.*, *supra* note 2.

¹³ *Id.*

¹⁴ 12 Step Treatment Centres, *Sober Living Home Transitional Housing*, available at http://www.12step treatment centres.com/SOBER_LIVING_HOME_TRANSITIONAL_HOUSING_95.asp (last visited Mar. 23, 2011).

¹⁵ M.M. Gorman *et al.*, *supra* note 2.

these homes can range from a private landlord renting his or her home to recovering addicts to corporations that operate full-time treatment centers across the country and employ professional staff.¹⁶

Because of the wide range in variety, the sober house concept can easily be abused. For example, some homes under the guise of a “sober house” may have twenty to thirty individuals renting space from a landlord who is simply seeking to maximize rent and where no actual treatment is provided.¹⁷ In addition, sober houses can attract criminal elements such as drug dealers who hope to sell to residents.

Local Zoning

Zoning may generally be defined as the division of a municipality or other local community into districts, the regulation of buildings and structures according to their construction and the nature and extent of their use, or the regulation of land according to its nature and uses. To be valid, zoning laws must balance individual property rights with the government’s substantial interests in promoting the public welfare.

The power to zone at the county and municipal level may be granted by the state legislature to local authorities by local or special act. Zoning is an exercise of legislative power residing in the state and delegated to a municipal corporation. The enactment of a zoning ordinance constitutes the exercise of a legislative and governmental function. In Florida, the zoning power of municipalities is derived from article VIII, section 2(b) of the Florida Constitution through the Municipal Home Rule Powers Act. The Florida Legislature grants the governing body of a county the power to establish, coordinate, and enforce zoning and business regulations necessary for the protection of the public. However, the doctrine of separation of powers prohibits delegation of zoning powers to administrative bodies and limits judicial review. Since zoning is primarily legislative in nature, zoning decisions should be made by zoning authorities responsible to their constituents.¹⁸

III. Effect of Proposed Changes:

Section 1 amends s. 397.311, F.S., that contains definitions relating to the treatment of substance abuse. The bill adds a definition of “sober house transitional living home” as a residential dwelling that provides peer support in a substance abuse free living environment, but such homes are not defined as a component of clinical treatment.

Section 2 amends s. 397.403, F.S., relating to licensure of substance abuse providers by the Department of Children and Families (DCF). The bill creates new standards and regulations for sober houses. The bill specifies that applicants for licensure must comply with local zoning standards.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Dana M. Tucker, *Preventing the Secondary Effects of Adult Entertainment Establishments: Is Zoning the Solution?* Journal of Land Use and Environmental Law, Volume 12.2 (Spring 1997).

The applicant must first notify the city or county in writing that the sober house will not be located within 1,000 feet of another sober house. The applicant must also provide the maximum number of residents in the home. Sober houses operated by a licensed substance abuse provider are exempt from the requirement to notify local governments as long as the location of the sober house is provided in the department's licensure process for substance abuse providers.

The bill requires the local government to review the notice to determine if the sober house would comply with local zoning and occupancy standards as well as the minimum distance between sober houses provided in the bill. The local government must notify the applicant and DCF of its determination. Sober houses that were operating before the effective date of the bill have until September 1, 2013 to apply for a license and provide the required notice to local government. Sober homes in existence before July 1, 2013 are exempt from the minimum distance requirements between sober homes.

If the local government finds that the application for a sober house does not comply with the bill, the differences can be mediated if both parties agree to mediation under s. 186.509, F.S.

The bill does not require a local government to adopt new ordinances. The bill does authorize local governments to adopt more liberal ordinances to govern sober houses. It is not clear what "more liberal" means in this context. It could mean that local governments could adopt ordinances that are less stringent than the state law, for example, allowing sober houses to be closer than 1,000 feet from each other.

The department is authorized to adopt rules to establish penalties for failing to obtain a license from the department to operate a sober house.

Section 3 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The FHA prohibits a large range of practices that discriminate against individuals on the basis of race, color, religion, sex, national origin, familial status, and disability or handicap. Discriminatory practices involving recovering addicts are forbidden because the term disability has been interpreted to include individuals recovering from drug or

alcohol addiction.¹⁹ Restrictions placed on sober houses by the bill or by local ordinances may violate the FHA. An owner or operator of a home may bring suit to seek relief under the FHA.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill authorizes DCF to regulate sober houses under ch. 397, F.S. This chapter authorizes the department to assess fees by rule.

B. Private Sector Impact:

The bill could limit the operation of sober houses. The bill would also authorize the department to assess licensure fees. The fiscal impact of such fees is unknown as the amounts would need to be adopted by rule.

C. Government Sector Impact:

The bill would have a significant fiscal impact on DCF. The number of sober houses statewide that would apply for licensure is not known. Preliminary estimates from DCF are provided below and are based on approximately 6,000 sober houses.

Fiscal Impact	Fiscal Year 2013-14	
	FTE	Total
Department of Children and Families		
Staff for licensing sober houses	65	\$6,836,895
Modify to information technology systems		\$200,000
Total	65	\$7,036,895

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on April 1, 2013:

- The definition of “sober house transitional living home” was moved within s. 397.311, F.S., to clarify that such homes are not a component of the definition of clinical treatment.

¹⁹ M.M. Gorman *et al.*, *supra* note 2.

- The requirement that local governments approve facilities that planned to offer day or night treatment or residential treatment was removed. These facilities are currently licensed by the department and the licensure process will notify local governments.
- The CS includes language in s. 367.403, F.S., to state that a sober house operated by a licensed substance abuse provider is exempt from the requirement to notify local governments as long as the location of the sober house is provided in the application to the department for licensure as a substance abuse provider.
- The CS removes language that required local governments to approve treatment programs and substance abuse providers that are currently subject to state regulation.
- Sober homes in existence before July 1, 2013 are exempt from the minimum distance requirements between sober homes established in the bill.
- The department is authorized to adopt rules to establish penalties for failing to obtain a license from the department to operate a sober house.

B. Amendments:

None.