

State of Arkansas

76th General Assembly

Regular Session, 1987

HOUSE BILL 1411

By: Representative Mahony

"AN ACT TO ESTABLISH THE RIGHT TO LOCATE COMMUNITY HOMES FOR DEVELOPMENTALLY DISABLED PERSONS IN THE RESIDENTIAL NEIGHBORHOODS OF THIS STATE."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. TITLE. This Act shall be known as the "Location Act for Community Homes for Developmentally Disabled Persons."

SECTION 2. STATEMENT OF PURPOSE. The General Assembly declares that it is the goal of this Act to improve the quality of life of all developmentally disabled persons and to integrate developmentally disabled persons into the mainstream of society by ensuring them the availability of community residential opportunities in the residential areas of this state. In order to implement this goal, this Act should be liberally construed toward that end.

SECTION 3. DEFINITIONS. As used in this Act:

(A) "Developmental Disability" means a disability of a person which:
(1) (a) is attributable to mental retardation, cerebral palsy, epilepsy or autism; (b) is attributable to any other condition of a person found to be closely related to mental retardation because it results in impairment of general intellectual functioning or adaptive behavior similar to those of mentally retarded persons or requires treatment and services similar to those required for such persons; (c) is attributable to dyslexia resulting from mental retardation, cerebral palsy, epilepsy, or autism; and (d) has continued or can be expected to continue indefinitely.

(B) "Developmentally Disabled Person" means a person with a developmental disability.

(C) "Division" means the Division of Developmental Disabilities of the

Department of Human Service or the staff of the Division where the context so indicates.

(D) (1) "Family Home I" means a community-based residential home licensed by the Division that provides room and board, personal care, habilitation services, and supervision in a single-family environment for not more than eight (8) developmentally disabled persons.

(2) "Family Home II" means a community-based residential home licensed by the Division that provides room and board, personal care, habilitation services and supervision in a multi-family environment for more than eight (8) but less than sixteen (16) developmentally disabled persons.

(E) "Permitted Use" means a use by right which is authorized in residential zoning districts.

(F) "Political Subdivision" means a county or municipal corporation and includes any boards, commissions, or councils governing land use on behalf of the political subdivision.

SECTION 4. (A) A Family Home I is a residential use of property for the purposes of zoning and shall be treated as a permitted use in all residential zones or districts, including all single-family residential zones or districts, of all political subdivisions. No political subdivision may require that a Family Home, its owner, or operator obtain a conditional use permit, special use permit, special exception, or variance.

(B) A Family Home II is a multi-family residential use of a property for the purpose of zoning and shall be treated as a permitted use in all zoning districts allowing multi-family uses of all political subdivisions. No political subdivision may require that a Family Home II, its owner, or operator obtain a conditional use permit, special use permit, special exception, or variance.

SECTION 5. LICENSING REGULATIONS AND DENSITY CONTROL FOR FAMILY HOMES. For the purposes of safeguarding the health and safety of developmentally disabled persons and avoiding over-concentration of Family Homes I and II, either along or in conjunction with similar community-based residences, the division shall inspect and license the operation of Family Homes and may renew and revoke such licenses. A license is valid for one year from the date it is issued or renewed although the division may inspect such homes more fre-

quently, if needed. The division shall not issue or renew and may revoke the license of a Family Home not operating in compliance with this section and regulations adopted hereunder. Within one hundred eighty (180) days of the enactment of this Act, the Division shall promulgate regulations pursuant to Act 434 of 1967, as amended, the "Arkansas Administrative Procedures Act", which shall encompass the following matters:

(A) (1) Limits on the number of new Family Homes I and II to be permitted on blocks, block faces and other appropriate geographic areas taking into account the existing residential population density and the number, occupancy, and location of similar community residential facilities serving persons in drug, alcohol, juvenile, child, parole and other treatment programs as well as any other facilities such as public housing, soup kitchens at churches and boarding homes.

(2) Density limits as follows:

City_Population	Total_Number_of_Homes_I_and_II
1,000 or fewer	1
1,001 - 9,999	1 for every 2,000
10,000 - 49,000	1 for every 3,000
50,000 - 249,000	1 for every 10,000
250,000 -	1 for every 20,000

(B) Assurance that adequate arrangements are made for the residents of Family Homes to receive such care and habilitation as is necessary and appropriate to their needs and to further their progress towards independent living and that they have access to appropriate services such as public transportation, health care, recreation facilities and shopping centers.

(C) Protection of the health and safety of the residents of Family Homes I and II, provided that compliance with these regulations shall not relieve the owner or operator of any Family Home I or II of the obligation to comply with the requirements or standards of a political subdivision pertaining to set-back, lot size, flood zones, outside appearance, building, housing, health, fire, safety, and motor vehicle parking space that generally apply to single family residences in the zoning district for Family Home Is or multi-family use districts for Family Home IIs and provided further that no requirements for business licenses, gross receipt taxes, environmental impact studies or clearances may be imposed on such homes if such fees, taxes, or clearances are not imposed on all structures in the zoning district housing a like number

of persons.

(D) Procedures by which any resident of a residential zoning district or the governing body of a political subdivision in which a Family Home I or II is, or is to be, located may petition the division to deny an application for a license to operate a Family Home I or II on the grounds that the operation of such a home would be in violation of the limits established pursuant to paragraph (A) (1) or under paragraph (A) (2) of this section or that the proposed location is an area of high risk to the health and safety of the residents of the Family Home. Petitions claiming the high risk area basis for denial must set forth and document one or more of the following high risk rationales:

- i. high crime area,
- ii. close proximity to stored hazardous materials,
- iii. dangerous traffic pattern.
- iv. frequent flooding,
- v. insufficient fire protection.

(1) The division shall furnish a copy of proposed regulations promulgated hereunder to the Arkansas Municipal League, the Arkansas Association of County Governments and the Capitol Zoning Commission at least thirty days prior to the public hearing to be held thereon.

SECTION 6. (A) All applicants for a license to operate a family home I or II shall apply to the division for the license and shall file a copy of the application with the governing body of the political subdivision having jurisdiction over the zoning of the land on which the Family Home I or II is to be located. Notice of the application shall be sent by mail addressed to the resident as listed in the city directory or occupant of all buildings located within two hundred feet (200') of the proposed site. All applicants shall post a sign not less than twelve (12) inches by eighteen (18) inches in size at the site. The sign shall contain such statements as required by regulation promulgated pursuant to this Act. All applications must include population and occupancy statistics reflecting compliance with the limits established pursuant to paragraph (A) (1) and under paragraph (A) (2) of section 5 hereof.

(B) The Division may not issue a license for a Family Home until the applicant has submitted proof of filing with the governing body of the politi-

cal subdivision having jurisdiction over the zoning of the land on which such a home is to be located, a copy of the application at least thirty (30) days prior to the granting of such a license, and any amendment of the application increasing the number of residents to be served at least fifteen (15) days prior to the granting of a license.

SECTION 7. In order to facilitate the implementation of Section 5(A) (1) and (2), the Division shall maintain a list of the location, capacity and current occupancy of all Family Homes I and II. The Division shall ensure that this list shall not contain the names or other identifiable information about any residents of such home and that copies of this list shall be available to any resident of this state and any state agency or political subdivision upon request.

SECTION 8. Nothing in this Act shall be construed as relieving the owner or operator of any Family Home I or II of the obligation to comply with outside appearance requirements or structural requirements for location of a Family Home I or II within a local historic district or within the Capitol zoning district.

SECTION 9. Any political subdivision which currently has zoning restrictions or hereafter adopts zoning restrictions may develop a comprehensive plan for providing adequate sites for Family Homes I and II and submit such plan to the division along with population and occupancy statistics reflecting compliance with the limits established pursuant to Section 5(A) (1) and under (A) (2). The plan may also delineate unsuitable sites due to high risks set forth in Section 5(D). The division shall thereafter consult the comprehensive plan filed by the political subdivision in considering licensure of Family Homes I and II for that political subdivision.

SECTION 10. EXCLUSION BY PRIVATE AGREEMENT VOID. Any restriction, reservation, condition, exception, or covenant in any subdivision plan, deed, or other instrument of or pertaining to the transfer, sale, lease, or use of property which would permit residential use of property but prohibit the use of such property as a Family Home I or II for developmentally disabled persons shall, to the extent of such prohibition, be void as against the public policy

of this state and shall be given no legal or equitable force or effect.

SECTION 11. SEVERABILITY. If any section, subsection, paragraph, sentence, or any other part of this Act is adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this Act, but shall be confined to the section, subsection, paragraph, sentence, or any other part of this Act directly involved in the controversy in which said judgment has been rendered.

SECTION 12. All laws and parts of laws in conflict with this Act are hereby repealed.

