

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 1220

SPONSOR: Senator Sullivan

SUBJECT: Residential Swimming Pools, Spas, and Hot Tubs.

DATE: April 8, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bowman</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable</u>
2.	_____	_____	<u>FR</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill creates the "Florida Residential Swimming Pool Safety Act" requiring all new residential swimming pools to be equipped with at least one of four pool safety features; a pool barrier; an exit alarm on doors with pool access; an approved safety cover; or self-closing or self-latching doors providing access to the pool.

In order to pass a building inspection and receive a certificate of completion from the local building official, the pool must comply with the safety requirements of the bill. The bill creates a second degree misdemeanor for violating the terms of the bill.

The Department of Health is required to develop a drowning prevention education program and develop and make available to the public a drowning prevention pamphlet.

The bill provides an effective date of October 1, 1999.

This bill substantially creates chapter 515 of the Florida Statutes.

II. Present Situation:

Pools Are Leading Cause of Death for Young Children-- It is estimated that there are over 1 million residential pools in Florida and that approximately 23,000 new residential swimming pools are built or sold each year. In Florida, drowning is the leading cause of death for young children ages 1 to 4. Between 1992 and 1997, 420 children drowned in Florida. Of these, 268 drowned at home and 208 of these drowned in swimming pools at home. According to a study conducted by the United States Consumer Product Safety Commission, the majority of victims of drowning or near drowning incidents lived in or were visiting the residence where the drowning occurred, and 77 percent of the victims had been missing for five minutes or less. In addition, according to the National Safe Kids Campaign fact sheet, for every child that drowns, an additional four are

hospitalized for near-drowns. Fifteen percent of those children admitted for near-drownings die in the hospital.

The costs from near-drowning injuries are estimated to be \$73.5 million. The lifetime cost for care and treatment of a young child who has suffered brain disability due to a near-drowning incident is estimated to be \$4.5 million.

Another vulnerable population susceptible to drowning injuries is those age 65 and older. In this older group, drowning is a significant cause of death. Between 1992 and 1997, 448 elderly persons drowned in Florida, 195 of whom had medical problems such as Alzheimer's disease, suffering from confusion, balance or vision impairment, heart problems, or diabetes.

State Minimum Building Codes-- Chapter 553, F.S., provides for building construction standards for the state. Section 553.73(2), F.S., requires units of local government and state agencies that have code enforcement authority to adopt one of the State Minimum Building Codes as its building code. However, a local jurisdiction may adopt, under certain conditions, more stringent requirements than are imposed by the State Minimum Building Code. The State Minimum Building Code consists of the following model codes:

- The *Standard Building Code*, 1988 edition, which is published by the Southern Building Code Congress International (SBCCI);
- The Council of American Building Officials (CABO) *One and Two Family Dwelling Code* (OTFDW), 1986 edition;
- The *South Florida Building Code*, 1988 edition, which has been adopted by Dade County and Broward County; and
- The *EPCOT Building Code*, 1982 edition, which was developed and adopted by the Reedy Creek Improvement District, the local government which controls the property surrounding and including Walt Disney World in Orange and Osceola counties.
- Dade and Broward counties use amended versions of the *South Florida Building Code*. The *Standard Building Code* has been adopted by the remaining 65 Florida counties and all cities in those counties.

The 1998 Legislature passed CS/CS/HB 4181, Chapter 98-287, Laws of Florida, which authorizes the adoption and subsequent updates of a statewide unified building code to be called the Florida Building Code. In addition, the law reconstitutes the Board of Building Codes and Standards as the Florida Building Commission. The unified building code is to include provisions and requirements related to the types of materials used and construction methods and standards employed in order to meet the Florida Building Code criteria for swimming pools.

Chapter 98-287, Laws of Florida, anticipates that the Florida Building Commission will adopt a Florida Building Code which will be presented to the Florida Legislature during the 2000 legislative session. The law also repeals some of the current statutes applicable to building codes on January 1, 2001. The effective date of repeal of the relevant sections of chapter 553, Florida

Statutes, is subject to Legislative approval of the statewide unified building code as developed by the Florida Building Commission.

Recently, the Special Occupancy Technical Advisory Committee (TAC) of the Florida Building Commission adopted The Standard Swimming Pool Code, 1997 Edition to be included in the new unified Florida Building Code for the construction of residential swimming pools. The TAC recommends that the regulation of commercial swimming pools remain with the Department of Health.

The Standard Swimming Pool Code, 1997 Edition (Code)-- Section 315 of the *Code* requires, in part, that all outdoor residential swimming pools be provided with a barrier at least 4 feet tall and be constructed of materials that preclude easy access. In addition, access gates must be equipped to accommodate a locking device. Pedestrian access gates must open outwards and must be self-closing and have a self-latching device. Where a wall of a dwelling serves as part of the barrier, one of the following must apply:

- all doors with direct access to the pool must be equipped with an alarm that sounds when the door and screen are open;
- the pool must have a power safety cover; or
- other means of protection must be installed such as self-closing doors with self-latching devices or doors with positive mechanical latching or locking devices installed at a minimum of 54 inches above the threshold.

For aboveground pools, when the means of access are a ladder or steps, then the ladder or steps must be capable of being secured, locked or removed to prevent access, or the ladder or steps must be surrounded by a barrier that meets the requirements stated above. Indoor pools must be equipped with a door alarm, power safety cover, or other means specified above.

The *Code* is published as a supplement to the *Standard Building Code* and, according to representatives from the Florida Association of Counties and the Florida League of Cities, many counties and cities in Florida have adopted the *Code*, or portions of the *Code*, for their respective jurisdictions.

In addition, some local governments have adopted ordinances requiring that outdoor residential pools be enclosed or fenced. Violations of such ordinances are generally enforced as code enforcement matters.

III. Effect of Proposed Changes:

The bill creates the “Florida Residential Swimming Pool Safety Act,” providing legislative findings that drowning is a leading cause of death for young children and a significant cause of death for medically frail elderly person. In addition, the bill finds that constant adult supervision is the key to reducing the number of drowning and near-drowning incidents.

The bill provides definitions, including definitions of “approved safety cover,” “barrier,” “exit alarm,” “portable spa” and “residential.” A barrier is defined to mean a fence, dwelling wall, or nondwelling wall, or combination, that completely surrounds the swimming pool and obstructs access to the swimming pool from the residence or from the yard outside of the barrier.

Residential Pool Safety Requirements

The bill requires that new residential swimming pools contain certain safety features. The requirements of the bill do not apply to:

- any system of sumps, irrigation canals or flood control or drainage works;
- stock ponds, and storage tanks used in agricultural operations;
- public swimming pools;
- any political subdivision that adopts a residential pool safety ordinance equal to, or more stringent than the bill;
- any portable spa with a safety cover that meets certain specifications; and
- kiddie pools.

The bill focuses on residential swimming pools and spas and requires that, in order to pass final inspection and receive a certificate of completion, a residential swimming pool must have one of the following safety features:

- ▶ a pool barrier that meets certain characteristics, including that the barrier is at least 4 feet high;
- ▶ an approved safety pool cover;
- ▶ an exit alarm that has a minimum sound rating; and
- ▶ doors providing access to the pool are equipped with a self-closing, self-latching device.

In addition, an acceptable residential swimming pool barrier must be at least 4 feet high, not have any gaps or openings that allow a child to climb through the barrier, be placed around the perimeter of the pool, and be placed sufficiently away from the water’s edge to prevent a child or adult from immediately falling into the pool when the barrier is breached. In addition, gates that provide access to swimming pools must open outwards away from the pool and be self-closing and self-latching.

Penalties

The bill creates a second degree misdemeanor where a person fails to equip a new residential swimming pool with at least one pool safety feature as provided in the bill. A second degree misdemeanor is punishable by a prison sentence of not more than 60 days or a \$500 fine as provided in ss. 775.082, 775.083, F.S. No penalty is imposed if the person charged, within 45 days, equips the pool with at least one safety feature and attends a drowning prevention education program as provided in the bill.

Drowning Prevention Education

The Department of Health is required by the bill to develop a drowning prevention education program directed at persons who are in violation of the pool safety requirements of the bill. The department is granted rulemaking authority to establish the fees. The department is authorized to charge a fee not to exceed \$100 for the program. The drowning prevention program is to be funded using fee proceeds, state funds appropriated for the program and grants. In addition, the department is required to produce information for distribution to the public on drowning prevention.

Licensed pool contractors or a licensed home builder entering into an agreement to build a house that includes a residential swimming pool, must give the buyer a document that describes the requirements of the bill and a copy of the publication developed by the department on drowning prevention and the responsibilities of pool ownership. The department is granted rulemaking authority to promulgate rules describing the information that must be provided by licensed pool contractors and licensed home builders or developers.

The bill provides an effective date of October 1, 1999.

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 requirements of the bill will increase the cost of residential pool construction.

C. Government Sector Impact:

The Department of Health will incur costs in developing a drowning prevention education program and producing drowning prevention literature. While the department is authorized to charge a fee not to exceed \$100 for attendance at the drowning education prevention program, no specific provision is made for funding the production and distribution of drowning prevention literature.

Local governments may incur some costs associated with residential swimming pool construction inspection and the issuance of certificates of completion conducted by the local government's building inspector. Because pool construction is already an item inspected by local building inspectors, the increased cost of checking for pool safety features is nominal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill is unclear as to who is responsible for charging violators of the requirements of the bill with a second degree misdemeanor. Local building code officials have the authority to cite individuals for code violations, and through code enforcement boards to levy administrative fines and noncriminal penalties, but lack criminal enforcement responsibilities.

The bill does not grant the Department of Health specific rulemaking authority to adopt by rule pool safety education programs and materials that have been developed by various aquatic safety organizations as an alternative to developing the program and materials in-house.

When a State Building Code is adopted, the pool safety requirements included in that code may be different from the requirements set forth in this bill.

VIII. Amendments:

None.

