

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1269 w/CS Nursing Home Firesafety

SPONSOR(S): Gardiner & others

TIED BILLS: None

IDEN./SIM. BILLS: CS/SB 2466

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Elder Affairs & Long Term Care (Sub)	6 Y, 0 N	Meyer	Liem
2) Future of Florida's Families	15 Y, 0 N w/CS	Meyer	Liem
3) Insurance	16 Y, 0 N w/CS	Tinney	Cooper
4) Appropriations		Belcher	Baker
5)			

SUMMARY ANALYSIS

All nursing homes are required by the bill to be protected by approved automatic sprinkler systems; the bill specifies a time schedule for compliance:

- Each "hazardous area" of a nursing home, as defined by the National Fire Protection Association, must be protected by an approved sprinkler system by December 31, 2007; and
- The entire nursing home must be protected by an approved sprinkler system by December 31, 2009.

The bill authorizes the Division of State Fire Marshal of the Department of Financial Services (DFS) to grant two 1-year extensions for installing sprinkler systems in nonhazardous areas of nursing homes, but prohibits extensions for installing systems in hazardous areas of such homes. The legislation authorizes DFS to adopt rules, enforce the sprinkler system standards, and impose administrative sanctions for nursing homes that violate these provisions.

A loan guarantee program called the "State Fire Marshal Nursing Home Fire Protection Loan Guarantee Program," is established to help nursing homes defray the cost of installing sprinkler systems. The loan guarantee program provides up to \$4 million from the Insurance Regulatory Trust Fund to provide nursing homes that might not otherwise qualify for a loan for capital improvements. The State Fire Marshal is authorized to enter into limited loan guarantee agreements with one or more qualified public depositories in Florida. The loan guarantee agreements provide a limited guarantee by the state covering up to 50 percent of the principal loaned by the financial institution for the sole purpose of the initial installation of a fire protection system approved by the State Fire Marshal. Rulemaking authority is provided to the Division of State Fire Marshal; the bill also authorizes the State Fire Marshal to impose administrative sanctions against a nursing home that fails to install a sprinkler system as required by the bill.

The Agency for Health Care Administration (AHCA) estimates that there are 35 nursing homes in the state that will be required to install sprinkler systems at a total cost of \$4.41 million. AHCA estimates that Medicaid will pay a total of \$395,452 or \$162,531 in General Revenue, and \$232,921 from the Medical Care Trust Fund. The bill authorizes use of Medicaid funds for capital improvements to help pay for sprinkler system installation and authorizes a 5-year repayment period. Any Medicaid funds used for sprinkler system installation must come from existing Medicaid appropriations.

The bill takes effect July 1, 2004.

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

STORAGE NAME: h1269f.ap.doc

DATE: April 13, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

This bill requires affected nursing homes to install sprinkler systems to provide firesafety protection for residents.

B. EFFECT OF PROPOSED CHANGES:

Firesafety Sprinkler Systems

Automatic fire sprinklers have been in use in the U.S. since 1874 according to information provided by fire suppression system contractors. The Division of State Fire Marshal (the Division) within DFS is responsible for protecting Floridians from fire hazards under chapter 633, F.S.

Section 633.025, F.S., directs the State Fire Marshal, along with each municipality, county and special district with firesafety responsibilities, to adopt the most current edition of the National Fire Protection Association (NFPA) 101, Life Safety Code. That Code provides standards for fire alarms, fire suppression systems, and automatic sprinkler systems for various buildings, including buildings occupied as “health care occupancies” which include nursing homes. Under the Code, hazardous areas within nursing homes include boiler and fuel-fired heater rooms, laundries, paint shops, repair shops, soiled linen rooms, trash collection rooms, specified storage rooms, and laboratories employing flammable or combustible materials.

The Division reports that installation of automatic sprinkler systems prevents fire and the toxic smoke and gases produced by fire. When sprinklers are present in a building, the chances of dying in a fire are cut by one-half to two-thirds, compared to building fires where sprinklers are not present. When measured by the average number of deaths per thousand fires in 1994-1998, the reduction associated with sprinklers is 82 percent for properties that care for the aged or sick. The costs associated to insure properties with sprinkler systems are also less, compared to the insurance costs for buildings with no sprinkler systems.

In 2003, fires in nursing homes occurred in two states. In Tennessee, a fire in a nursing home killed eight people and in Connecticut, sixteen patients died in a nursing home fire. Officials in those two states reported that there were no sprinkler systems in the buildings.

The Insurance Regulatory Trust Fund is created by s. 624.523, F.S. It is funded by a variety of insurance-related fees, including fines, taxes, application fees and license fees required by the Insurance Code.

Nursing Homes

Pursuant to part II of chapter 400, F.S., nursing homes are licensed by the AHCA. According to AHCA, nursing homes under s. 400.232, F.S., are required to comply with the minimum standards of the National Fire Protection Association (NFPA) 101, Life Safety Code, as adopted by the State Fire Marshal, and with the Florida Building Code under s. 553.73, F.S. However, the firesafety standards

and the Building Code provisions do not require all existing nursing homes to be fully sprinkled because the automatic sprinkler system standards are dependent on the specific physical plant conditions of each nursing home, such as construction type, height in stories, size of facility, and other similar provisions.

AHCA reports there are currently 35 existing nursing home facilities in the state that are not "fully" sprinkled, however, these facilities are still in compliance with all the aforementioned standards and codes. According to AHCA, the 35 affected nursing homes have approximately 4,300 to 5,000 beds which are either partially sprinkled or completely without sprinklers. This represents about 5 percent of Florida's total nursing home beds.

Retrofitting and Loan Guarantee Program

To assist the estimated 35 nursing home facilities with installation of fire sprinkler systems, the Chief Financial Officer and the State Fire Marshal recommend the creation of a loan guarantee program. The loan guarantee will be funded with \$4 million from the Insurance Regulatory Trust Fund. The State Fire Marshal will solicit proposals from and select private financial institutions approved as state depositories to provide loans to the affected nursing homes. The Division reports the loan guarantee program likely will make it easier for nursing homes to secure a loan for the necessary capital improvements. The bill requires the State Fire Marshal to approve loan applications for fire protection plans to ensure that the systems meet the Firesafety Code.

The loan guarantee program will accept applications until December 2005; the maximum loan term is 10 years. Each guarantee is limited by the bill to 50 percent of the principal. Both the state and approved lenders will hold a security interest in the property for the duration of the loan.

C. SECTION DIRECTORY:

Section 1 amends section 633.022, F.S., Uniform Firesafety Standards, to require each licensed nursing home to possess an approved, supervised automatic sprinkler system in accordance with national standards and fire codes. Dates for compliance with the requirement to install sprinkler systems are provided.

Section 2 creates section 633.024, F.S., Legislative findings and intent, to provide legislative intent relating to the creation and operation of a limited loan guarantee program to assist nursing homes in retrofitting for sprinkler systems.

Section 3 creates section 633.0245, F.S., State Fire Marshal Nursing Home Fire Protection Loan Guarantee Program, to create the State Fire Marshal Nursing Home Fire Protection Loan Guarantee Program to be funded from the existing Insurance Regulatory Trust Fund.

Section 4 provides an effective date of July 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The following information is based on a fiscal analysis from AHCA dated March 11, 2004.

If the costs associated with retrofitting currently exempted nursing homes are passed on in the Medicaid cost-report, the state share (from the General Revenue Fund) would be approximately \$162,531 per year over the 5 years authorized in the bill for implementation. The bill authorizes use of Medicaid funds available for capital improvements to help pay for sprinkler system installation and authorizes a 5-year repayment period. Any Medicaid funds used for sprinkler system installation must come from existing Medicaid appropriations.

The cost estimates are based on:

- a cost of \$3 per square foot¹
- for 35 facilities at 42,000 square feet each
- average cost per facility \$126,000
- for a total of approximately 1,069 million square feet
- \$4,410,000 million in total project costs

This analysis assumes:

- All 35 facilities install sprinklers in year 1
- Reimbursement is based on Fair Rental Value System (FRVS)
- No providers are limited to their per Bed Standard Limitation
- All providers are 65 percent on their FRVS Indexing Curve
- Allocating the costs over the 5 and one-half years allowing for implementation for a total cost per year

The Division of State Fire Marshal will administer the Nursing Home Fire Protection Loan Guarantee Program. The Division reports that it can operate the loan program within existing resources.

The guarantee account will be provided by the Insurance Regulatory Trust Fund in the Department of Financial Services. The estimated cash balance in the fund at June 30, 2005, is estimated to be \$14.1 million. The bill specifies that a maximum of \$4 million from the trust fund may be used for the loan guarantee program. State monies will be paid only for defaulted loans, at a rate of 50 percent of the total loan amount and only after the lending institution exhausts all normal remedies available for loan defaults.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Nursing homes that are not already compliant will be required to install sprinkler systems. Some of those costs may be reimbursed by Medicaid funds available for capital improvements. The total estimate for compliance by the 35 affected nursing homes is approximately \$4.4 million dollars.

D. FISCAL COMMENTS:

¹ Cost estimates for retrofitting existing facilities with sprinkler systems based on federal Fire Sprinkler Incentive Act of 2003

The U.S. House of Representatives and Senate are considering legislation that would provide tax relief to entities that install sprinkler systems. The bills will amend the 1986 Internal Revenue Code to classify automatic fire sprinkler systems as "5-year property" for the purpose of depreciation. This 5-year depreciation period is a shorter period than IRS generally offers for depreciation of capital improvements. DFS reports that the accelerated depreciation schedule is expected to encourage the retrofit of existing depreciable property by offering a quicker "pay back." For instance, if a sprinkler system costs \$100,000, and the federal legislation is passed, sprinkler improvements could be depreciated at \$20,000 annually for 5 years, as opposed to the current law that specifies a 30-year schedule for depreciation of most capital improvements.²

The Division of State Fire Marshal will administer the Nursing Home Fire Protection Loan Guarantee Program. The Division will be able to operate the program within existing resources. The guarantee account will be funded from the Insurance Regulatory Trust Fund. The bill specifies that a maximum of \$4 million per year for a maximum of 10 years will be at risk. No limited loan agreement may be entered into after December 1, 2005. State funds will be paid only for defaulted loans, at a rate of 50 percent of the total loan amount and only after the lending institution exhausts all normal remedies available for loan defaults.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Division of State Fire Marshal is granted rulemaking authority to implement the loan guarantee program and associated provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The bill was reported favorably by the Subcommittee on Elder Affairs & Long Term Care with one amendment. That amendment creates a loan guarantee program, "The State Fire Marshal Nursing Home Fire Protection Loan Guarantee Program" to assist nursing homes that need to be retrofitted to comply with the provisions of the bill. The loan guarantee is funded from the Insurance Regulatory Trust Fund. DFS anticipates that providing a state guarantee through the loan program will help nursing homes secure loans from private lenders at favorable interest rates. One amendment was adopted in the Future of Florida's Families Committee that revised the reference in section 1 of the bill to "Life Safety Code," instead of "Publication 101, 2003 edition."

The Committee on Insurance adopted an amendment March 31, 2004, to authorize the use of Medicaid funds for capital improvements to help pay for sprinkler system installation. The amendment authorizes a 5-year repayment period. Any Medicaid funds used for sprinkler system installation must come from existing Medicaid appropriations.

² Reported in SprinklerNet: a publication of the American Fire Sprinkler Association. Senate Bill 1566