

# 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 2014

SPONSOR: Comprehensive Planning Committee and Senator Wasserman Schultz

SUBJECT: Public Swimming Pools

DATE: April 16, 2004                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cooper	Yeatman	CP	Fav/CS
2.	_____	_____	HC	_____
3.	_____	_____	AGG	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This Committee Substitute (CS) requires that certain public swimming pools be enclosed by barriers and have other safety devices, and provides for inspections and penalties for non-compliance.

This bill creates section 514.0305, and amends s. 514.0115 of the Florida Statutes.

**II. Present Situation:**

**The Florida Building Code**

Building codes establish minimum safety standards for the design and construction of buildings by addressing such issues as structural integrity; mechanical, plumbing, electrical, lighting, heating, air conditioning, ventilation, fireproofing, and exit systems; safe materials; energy efficiency; and accessibility by persons with physical disabilities. In doing so, these regulations protect lives and property, promotes innovation and new technology, and helps ensure economic viability through the availability of safe and affordable buildings and structures.

The Florida Building Code does not include provisions regulating safety barriers or gates for public swimming pools. However, it does contain such provisions for residential swimming pools.

**The Residential Swimming Pool Safety Act**

Chapter 2000-143, L.O.F. (now ch. 515, F.S.), created the Preston de Ibern/McKenzie Merriam Residential Swimming Pool Safety Act which requires 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 law. The law created a second degree misdemeanor for violating the terms of the law.

This chapter of law is implemented in s. 424.2.17 of the Florida Building Code.

### **Public Swimming and Bathing Facilities**

Chapter 514, F.S., governs the regulation of public swimming and bathing facilities in the state. Section 514.011(1), F.S., defines a public swimming pool as, in part:

“...a conventional pool, spa-type pool, wading pool, special purpose pool, or water recreation attraction, to which admission may be gained with or without payment of a fee and includes, but is not limited to, pools operated by or serving camps, churches, cities, counties, day care centers, group home facilities for eight or more clients, health spas, institutions, parks, state agencies, schools, subdivisions, or the cooperative living-type projects of five or more living units, such as apartments, boardinghouses, hotels, mobile home parks, motels, recreational vehicle parks, and townhouses.

Section 514.021, F.S., authorizes the Department of Health to adopt and enforce rules to protect the health, safety, or welfare of persons using public swimming pools and bathing places. Sanitation and safety standards include, but are not limited to, measures to ensure safety of bathers. The department is prohibited from establishing regulations governing the construction, erection, or demolition of public swimming pools and bathing places, as this authority is preempted to the Florida Building Commission through adoption and maintenance of the Florida Building Code.

Chapter 64E-9, F.A.C., implements these regulations. Chapter 64E-9.008, F.A.C., provides supervision and safety standards for public pools. Section (2) addresses safety equipment, requiring that all pools have a shepherd's hook, and at least one 18 inch diameter lifesaving ring with sufficient rope attached to reach all parts of the pool from the pool deck. Section (3) requires that all pools with a slope transition have a safety line in place at all times unless a lifeguard or instructor is present. Subsection (4) stipulates that pool covers and solar blankets may only be used during times when the pool is closed. Furthermore, unless the pool cover or solar blanket is secured around the entire perimeter and is designed to support a live load of an adult person, the pool area must be inaccessible to unauthorized individuals during times of cover or blanket use.

This rule does not require safety barriers and does not include gates specifications for public swimming pools.

Section 514.0115, F.S., exempts the following public pools from DOH supervision and regulation:

- Private pools and water therapy facilities connected with facilities connected with hospitals, medical doctors' offices, and licensed physical therapy establishments;

- Pools serving no more than 32 condominium or cooperative units which are not operated as a public lodging establishment (except for water quality);
- Pools serving condominium or cooperative associations of more than 32 units and whose recorded documents prohibit the rental or sublease of the units for periods of less than 60 days, under specified conditions;
- A private pool used for instructional purposes in swimming; and
- Any pool serving a residential child care agency registered and exempt from licensure pursuant to s. 409.176, F.S., under specified conditions.

DOH reports that they are responsible for permitting and inspecting approximately 33,000 public swimming pools in Florida. The permitting includes construction approval and an operations permit. Two inspections per year are conducted by the DOH as part of the operations permit.

DOH also reports that nationally, drowning was the leading cause of death among 1-4 year-olds in 2000. Florida's drowning rate for this age group is more than double the national average, and is higher than any other state in the nation. More than two-thirds of these deaths occurred in swimming pools.

### III. Effect of Proposed Changes:

**Section 1** creates s. 514.0305, F.S., to require that public swimming pools be enclosed by barriers and have other safety devices. Public pools are required to be equipped with the following safety features:

- A permanent barrier that completely encloses the pool;
- Pedestrian gates that open outward, are self-closing, and equipped with a release mechanism that is located on the pool side of the gate and placed so that a young child cannot reach it; and
- Gates, other than pedestrian gates, which must be equipped with lockable hardware or padlocks and which must remain locked when not being used.

The barriers and other equipment must be inspected by the county health department during each routine inspection. The inspector is required to immediately close any pool that does not comply with the requirements of this section. Upon such closing, the owner or operator of the pool must correct the deficiencies or be subject to an administrative fine not to exceed \$1,500. In addition, the department may recover attorney's fees and costs when they prevail in an enforcement action pursuant to this bill.

The definitions in s. 515.25 apply to this section and are incorporated by reference, except that the definition of "public swimming pool" is as provided in s. 514.011(2), F.S. Additional applicable definitions include:

- "Barrier" means a fence, dwelling wall, or non-dwelling wall, or any combination thereof, which completely surrounds the swimming pool and obstructs access to the swimming pool, especially access from the residence or from the yard outside the barrier.
- "Department" means the Department of Health.

- "Public swimming pool" means a swimming pool, as defined in s. 514.011(2), which is operated, with or without charge, for the use of the general public; however, the term does not include a swimming pool located on the grounds of a private residence.
- "Young child" means any person under the age of 6 years.

Finally, this section applies to all public pools that are operated or constructed on or after July 1, 2005, except that pools in operation on that date must be brought into compliance by April 1, 2005.

The department is required to revise its rules to incorporate the requirements of this bill.

Finally, hotels are exempted from the requirements of the bill.

**Section 2** amends s. 514.0115(2), F.S. is amended to specify that pools in condominium complexes are subject to the requirements of section 1.

**Section 3** provides that this act shall take effect July 1, 2004.

#### **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:**

None.

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

Public entities that own or operate public pools must comply with the requirements of this bill. DOH reports that these costs can range from a few hundred dollars to several thousand dollars, depending on the size of the pool, location of buildings, and other site-specific considerations. DOH states that deadlines imposed in the bill do not allow sufficient time to comply with the requirements.

DOH also notes that the provision of adequate safety barriers may reduce liability of public swimming pool owners.

DOH and county public health units would be responsible for enforcing the requirements of this bill. DOH reports that the bill will significantly increase the workload of county public health department attorneys and that enforcement cost could be excessive.

**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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