

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.)

Prepared By: Banking and Insurance Committee

BILL: SB 2572

SPONSOR: Senator Webster

SUBJECT: Sprinkler Systems for Nursing Home Facilities

DATE: April 13, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	Favorable
2.	_____	_____	<u>HE</u>	_____
3.	_____	_____	<u>HA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Bill 2572 requires all nursing homes to be protected by approved, supervised automatic sprinkler systems in accordance with the following schedule:

- Each “hazardous area” of a nursing home must be protected by a sprinkler system by December 31, 2008; and,
- The “entire” nursing home must be protected by a sprinkler system by December 31, 2010.

The bill authorizes the Division of State Fire Marshal (SFM) within the Department of Financial Services (DFS) to grant two 1-year extensions for installing sprinkler systems in the “entire” nursing home (or non-hazardous areas) if it determines that the nursing home has been prevented from complying for reasons beyond its control.

The bill establishes a loan guarantee program called the “State Fire Marshal Nursing Home Fire Protection Loan Guarantee Program,” which will help nursing homes defray the cost of installing sprinkler systems. This loan guarantee program provides up to \$4 million from the Insurance Regulatory Trust Fund to provide nursing homes that might not otherwise be able to secure a loan, the ability to do so for capital improvements, e.g., installing sprinkler systems. The SFM is authorized to enter into limited loan guarantee agreements with one or more qualified public depositories in Florida and such agreements provide a limited guarantee by the state covering up to fifty percent of the principal sum loaned by the financial institution to an eligible nursing home for the sole purpose of the initial installation of a fire protection system approved by the State Fire Marshal.

The Agency for Health Care Administration (AHCA or agency) estimates that there are 35 nursing homes in the state which would have to comply with the measure's provisions at a total cost of \$4.41 million. The agency estimates that Medicaid would pay a total of \$669,419 or \$275,198 in General Revenue, and \$394,221 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 total estimated cost to Medicaid over the five-year period is \$3,347,097.

Finally, the legislation authorizes the DFS to adopt rules, enforce the sprinkler system standards, and impose administrative sanctions for nursing homes in violation of these provisions.

The bill amends section 633.022, of the Florida Statutes.

The bill creates sections 633.024 and 633.0245, of the Florida Statutes.

II. Present Situation:

Nursing Homes

Pursuant to part II of ch. 400, F.S., nursing homes are licensed by the Agency for Health Care Administration (AHCA Agency). According to representatives with the Agency, nursing homes under s. 400.232, F.S., are required to be in compliance with the minimum standards of the National Fire Protection Association (NFPA) 101, Life Safety Code 101, as adopted by the State Fire Marshall under s. 633.025, F.S., and with the Florida Building Code under s. 553.73, F.S. However, the fire safety 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, etc.

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

A loan guarantee program does not currently exist for the installation of fire protection systems in nursing homes. Medicaid will not pay for installations of fire protection systems, except as these are incorporated in the Fair Rental Value payment system for property, according to officials with AHCA.

Fire Safety-Sprinkler Systems

The Division of State Fire Marshal (SFM) under the Department of Financial Services (DFS) is responsible for protecting Floridians from fire hazards under ch. 633, F.S. Under s. 633.025, F.S., the SFM, along with each municipality, county and special district with firesafety responsibilities, has adopted 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 for automatic sprinkler systems for various buildings, including buildings occupied

as “health care occupancies” which include nursing homes. Under the Life Safety Code (chapter 19), hazardous areas within nursing homes include the following: boiler and fuel-fired heater rooms, laundries larger than 100 square feet, paint shops, repair shops, soiled linen rooms, trash collection rooms, specified storage rooms, and laboratories employing flammable or combustible materials.

According to representatives with national fire sprinkler associations,¹ installation of automatic sprinkler systems prevent 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 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. Also, the costs associated to insure properties with sprinkler systems are also less, compared to such costs to 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 authorized and 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.

III. Effect of Proposed Changes:

Section 1. Amends s. 633.022, F.S., pertaining to Uniform Firesafety Standards. The legislation provides that notwithstanding any law to the contrary, a nursing home licensed under part II of ch. 400, F.S. must be protected by an approved, supervised automatic sprinkler system in accordance with section 9 of the National Fire Protection Association, Inc. (NFPA), Life Safety Code, according to the following schedule:

- a) Each hazardous area of a nursing home must be protected by an approved, supervised automatic sprinkler system by December 31, 2008; and,
- b) The entire nursing home must be protected by an approved, supervised automatic sprinkler system by December 31, 2010.

The Division of State Fire Marshal (SFM) may grant up to two 1-year extensions of the time limits for compliance with the requirements of “b)” above, if the SFM determines that the nursing home has been prevented from complying for reasons beyond its control. The SFM is authorized to adopt rules to enforce these provisions and any nursing home licensed under part II of chapter 400, F.S., which is in violation of these provisions may be subject to administrative sanctions.

Furthermore, adjustments shall be made to the provider Medicaid rate to allow reimbursement over a 5-year period for Medicaid’s portion of the costs incurred to meet the requirements of this section. Funding for this adjustment shall come from existing nursing home appropriations.

¹ American Fire Sprinkler Association and the National Fire Protection Association.

According to AHCA, the reasons a nursing home would have to extend installation of sprinklers could be such items as insufficient water pressure delivered to the site by the water utility or lack of water lines to the subject property.

Section 2. Creates s. 633.024, F.S., to provide legislative findings and intent for the loan guarantee program. The Legislature finds that it is essential to promote the public purpose of ensuring effective fire protection for the safety and welfare of nursing home residents who, because of their inability to protect themselves, are most vulnerable to injury or death in the event of a fire. This purpose is served by requiring the installation of fire protection systems in all nursing home facilities in Florida which do not have such systems.

The bill finds that due to the high cost of retrofitting fire protection systems for these homes, state action is necessary to provide a limited state loan guarantee covering these capital costs which will expedite the immediate installation of fire protection systems in nursing homes. The proposal also finds that it is in the public interest that the guarantee loan program be funded via the Insurance Regulatory Trust Fund (Fund) because it is funded by the proceeds of fire insurance premiums written in Florida.

Section 3. Creates s. 633.0245, F.S., to establish a loan guarantee program called the State Fire Marshal Nursing Home Fire Protection Loan Guarantee Program (“Program”), which will help nursing homes defray the cost of installing sprinkler systems. The SFM, with the assistance of the Division of Treasury within the DFS, may enter into an investment agreement concerning the investment of funds held in the Fund to establish a limited loan guarantee program. No more than \$4 million of the balance in the Fund in any fiscal year may be at risk at any time for the purpose of the limited loan guarantees. Such at risk funds may not be used to guarantee any limited loan guarantee agreement for a period longer than 10 years. Further, no limited loan guarantee agreement based on invested funds may be entered into after December 1, 2005.

Under the program, the SFM is authorized to enter into limited loan guarantee agreements with one or more qualified public depositories in Florida and such agreements shall provide a limited guarantee by the State covering no more than fifty percent of the principal sum loaned by the financial institution to an eligible nursing home for the initial installation of a fire protection system approved by the SFM. The SFM must solicit requests for proposals (RFPs) from qualified financial institutions willing to fund loans under the Program and each proposal must specify the applicable interest rates, repayment terms, and credit and loan policies. After evaluation of all requests, the SFM shall select one or more institutions to participate in the Program. The bill does not require an eligible nursing home to do business with a designated lender.

The bill authorizes the SFM to create by rule an application form which must be submitted by each eligible nursing home intending to install a fire protection system funded by a loan from a designated lender. The form shall require such information as the name and address of the nursing home; the owner or lessee; and a complete description of the structure with detailed information as to bed capacity, water lines, and cost documentation. After approval of an application by the SFM, the application is sent to one or more lenders for funding and if the application is insufficient, the SFM must so notify the applicant in writing.

At closing, an applicant nursing home must provide the lender and the SFM with a security interest in the property to be retrofitted with the sprinkler system and the SFM must then execute a limited loan guarantee in favor of the lender guaranteeing no more than 50 percent of the face value of the loan. A lender is not entitled to file a claim for loss under the guarantee unless all reasonable and normal remedies available and customary for lending institutions for resolving problems of loan repayments are exhausted. If the lender receives collateral security in connection with the loan, the lender must first exhaust all available remedies against that security. An application for participation in the Program may not be accepted by the SFM after June 30, 2006. For purposes of the bill, an “eligible nursing home” means a home facility providing nursing services as defined under ch. 464, F.S., licensed under part II of ch. 400, F.S., and certified by the Agency as lacking an installed fire protection system as defined in s. 633.021(8), F.S.

Section 4. Provides an effective date of July 1, 2005.

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 Agency for Health Care Administration has identified 35 existing licensed nursing homes that will be affected by this legislation.² These 35 nursing homes are an average of 42,000 square feet each which represents approximately 1.47 million square feet of non-sprinkled area. Including required upgrades such as fire alarms and smoke compartment renovations, it could cost approximately \$3.00 per square foot to retrofit these facilities.³ Based on these calculations, the total dollar amount to fully sprinkler these 35 facilities will be approximately \$4.41 million, which is \$882,000 per year spread over a 5 year period.

² This was done by direct telephone inquiry.

³ The installation fee for an automatic sprinkler system was taken from the Fire Sprinkler Incentive Act of 2003 by the U.S. Congress.

C. Government Sector Impact:

According to AHCA, the estimated cost to Medicaid under this bill is \$669,419 per year, over a five-year period. Of this amount \$275,198 would be from General Revenue Fund (State – 41.11%) and \$394,221 would be from the Medical Care Trust Fund (Federal – 58.89%). Therefore, the total five-year cost to Medicaid is approximately \$3,347,097. This calculation assumes that all hazardous area automatic sprinkler systems are corrected *before* December 31, 2008 and are in conjunction with the “entire nursing home” automatic sprinkler system.⁴

Funding is not appropriated in the bill for the FTE position needed by the Agency (to be located in the Health Care Regulation budget entity). Approximately \$64,452 the first year and \$61,842 each additional year in General Revenue funds will be required.

The Division of State Fire Marshal will administer the Nursing Home Fire Protection Loan Guarantee Program and it reports that it can operate the loan program within existing resources. The guarantee account will be funded from monies and interest earned from the existing Insurance Regulatory Trust Fund. 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.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.

⁴ The AHCA estimate assumes that all 35 providers will install their automatic sprinkler systems in year one. Each of the 35 providers will have their Medicaid rates adjusted over a five-year period to allow for reimbursement for Medicaid’s portion of the costs incurred to meet the new requirements under the bill. Each nursing facility will be required to submit their cost information to the Agency upon completion of the sprinkler system retrofit. Upon receipt of proper documentation of costs, the Agency will begin the five-year reimbursement for said costs. Current reimbursement methodologies do not allow for five-year reimbursement periods for individual items, therefore, the reimbursement for the sprinkler system retrofits will be in the form of an add-on to the final Medicaid per diem rate.

Under current cost reporting methods, the installation of an automatic sprinkler system is a major purchase and considered a capital improvement. These items are classified as Property costs and are reported on Schedule T “Capital Additions and Improvements” in the facility’s cost report. For providers reimbursed under the Fair Rental Value System (FRVS), the cost to install the automatic sprinkler system to the facility is added to the property indexing and becomes part of the property component of the final reimbursement per diem. Since reimbursement for the sprinkler system retrofits will be reimbursed as an add-on during the five-year period, providers being reimbursed under FRVS will not be allowed to report the costs for the sprinkler systems on the Schedule T of their cost report. Providers not reimbursed under FRVS will need to adjust out the costs of the required retrofit from their cost report. This will keep the 35 facilities from being reimbursed twice for the required sprinkler system. In addition, no facility will be eligible for an interim rate increase due to the costs incurred for the required sprinkler system retrofit.

VIII. Summary of Amendments:

None.

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