

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 645

Nursing Home Facilities

**SPONSOR(S):** Gelber

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 298

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care General Committee	_____	Brown-Barrios	Brown-Barrios
2) Domestic Security Committee	_____	_____	_____
3) Health Care Appropriations Committee	_____	_____	_____
4) Health & Families Council	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

HB 645 requires the Agency for Health Care Administration (AHCA) to reimburse an eligible nursing home facility for the costs of building or modifying its emergency electrical power system capacity to fully operate the facility during and after an emergency when power is interrupted. To be eligible for reimbursement, a nursing home facility must:

- Not have been cited for a class I deficiency as defined in s. 400.23(8)(a), F.S., within the last 30 months preceding the application for reimbursement,
- Not be in the hurricane evacuation zone in its county,
- Have the capacity, as determined by AHCA, to receive transferred residents that are evacuated, and
- Agree to receive those transferred residents.

The AHCA estimates the fiscal impact of the bill to be \$57 million (general revenue).

If enacted, the bill takes effect upon becoming law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – HB 645 requires AHCA to reimburse certain nursing homes for the installation cost of an emergency generator to fully operate the facility during and after an emergency when power is interrupted.

### B. EFFECT OF PROPOSED CHANGES:

The bill creates s. 400.0627, F.S., to require the AHCA to reimburse nursing homes, meeting certain eligibility criteria, for the installation cost of an emergency generator to fully operate the facility due to a utility interruption during and after an emergency in order to remain fully operational and to provide care of residents evacuated from other nursing facilities. This installation would be additional to the existing installation and would not require the nursing home to modify the existing electrical system.

## BACKGROUND

### Hurricane Evacuation Zones

Hurricane evacuation zones are predetermined geographic areas that are likely to experience destruction or severe damage, from storm surge, waves, erosion, or flooding.<sup>1</sup> Depending on the track of the storm, the greater the intensity of a storm (Tropical to Category 5) the greater the geographic area that will experience these conditions and therefore need to be evacuated. The closer the nursing home is to the coast, the more likely that a nursing home will be located in an evacuation zone.

According to AHCA, there are 677 licensed nursing homes in Florida. During the 2005 hurricane season there were five recorded hurricanes which caused Florida evacuations. There were 21 nursing home facilities that were completely evacuated and four that were partially evacuated with a total of 1,795 patients being displaced. Only one nursing home facility was actually closed or became inactive during the entire 2005 season. There were 51 nursing home facilities that sustained some type of damage from the hurricanes. A total of 239 nursing home facilities lost power and switched to generators during the hurricane season with one additional nursing home facility losing power without the availability of a generator.<sup>2</sup>

AHCA estimates approximately 466 nursing facilities are not located in county hurricane evacuation zones. This represents approximately 57,000 nursing home beds or about 70% of capacity.

### Requirements for Nursing Home Licensure - Essential Electrical System

Since July 1982, all nursing home facilities licensed under part II of ch. 400, F.S., have been required by rule to have an onsite Essential Electrical System (EES) with an onsite fuel supply of up to 64 hours.<sup>3</sup> The design, installation, operation, and maintenance of this EES is reviewed by AHCA.

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<sup>1</sup> According to NOAA, storm surge maps reflect the worst case hurricane storm surge inundation (including astronomical high tide), regardless of the point of where the center of the hurricane (or tropical storm) makes landfall. No single hurricane will necessarily cause all of the flooding represented on evacuation maps. The data reflect only still-water saltwater flooding and do not take into account the effects of pounding waves that ride on top of the storm surge in locations exposed to wave action. Evacuation maps do not show areas that may be flooded by excessive rainfall-they only depict flooding that would occur as a result of the ocean level rising as well as estuaries and rivers that can be affected by hurricane storm surge.

<sup>2</sup> Senate Staff Analysis and Economic Impact Statement SB 298, revised January 23, 2006

<sup>3</sup> FAC 59A-4.133. Of the 669 existing licensed nursing home facilities, there are 30 facilities constructed prior to 1982 that do not have an existing generator system. These facilities house only residents, who do not require any life support systems, and as such, these facilities are in compliance with all state and federal codes and standards through the use of a battery supplied emergency electrical system that supplies emergency power to the life safety components of the facility as required by NFPA 99 for 1-½ hours duration. These components include the fire alarm, nurse call, emergency egress lighting, exit lighting, and locking systems.

The EES supplies electrical service to the three main electrical branches, including the Life Safety branch, the Critical Branch, and the Equipment Branch within 10 seconds of normal service interruption. As required by the NFPA standards, these emergency electrical branches provide emergency electrical service to specified electrical components of the facility such as the fire alarm system, the nurse call system, the emergency egress lighting system, the exit lighting system, the magnetic door locking system, and selected critical convenience receptacles and equipment in the facility. In addition, since 1996, all new nursing home facilities and new additions to these facilities have been required to have an EES that supplies electrical power to all ventilating fans, ice making equipment, refrigeration equipment, and selected heating, ventilation, and air conditioning equipment as determined by the facility, for a period up to 72 hours of continuous service at actual load capacity of the generator.

The EES is not required to provide electrical service to the heating, ventilation, and air conditioning (HVAC) equipment of the facility nor to the general lighting or other electrical items not specifically required by the National Fire Protection Association codes and standards.

### Class I Deficiency

Section 400.23, F.S., requires AHCA to evaluate all nursing home facilities and against standards and make a determination as to the degree of compliance by each licensee with the established standards adopted in rules. The agency bases its evaluation on the most recent inspection report, taking into consideration findings from other official reports, surveys, interviews, investigations, and inspections. Findings of deficient practice are classified according to the nature and the scope of the deficiency.

There are four classes of deficiencies:

- A class I deficiency is a deficiency in which immediate corrective action is necessary because the facility's noncompliance has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in a facility.
- A class II deficiency is a deficiency that has compromised a resident's ability to maintain or accomplish his or her highest practicable physical, mental, and psychosocial well-being, as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services.
- A class III deficiency is a deficiency that will result in no more than minimal physical, mental, or psychosocial discomfort to the resident or has the potential to compromise the resident's ability to maintain or accomplish his or her highest practical physical, mental, or psychosocial well-being, as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services.
- A class IV deficiency is a deficiency that will result in no more than a minor negative impact on the resident.

According to AHCA, data from the most recent 30-month period indicates that 47 facilities have received a Class I deficiency. The classification of a deficiency affects the licensure status of the facility. A conditional license is issued if a facility has one or more class I or class II deficiencies, or class III deficiencies not corrected within the time established by the Agency. In addition, a facility that is cited for a class I deficiency, two or more class II deficiencies arising from separate surveys or investigations within a 60-day period, or has had three or more substantiated complaints within a 6-month period, each resulting in at least one class I or class II deficiency, is placed on a 6-month survey cycle for the next 2-year period.

### Evacuation and Transfer of Nursing Home Residents

Section 400.23(2)(g), F.S., requires AHCA to develop rules after consultation with the Department of Community Affairs that requires each nursing home to develop a comprehensive emergency management plan (CEMP). At a minimum, the rules must provide for plan components that address emergency evacuation transportation; adequate sheltering arrangements; postdisaster activities, including emergency power, food, and water; postdisaster transportation; supplies; staffing; emergency equipment; individual identification of residents and transfer of records; and responding to family inquiries. The comprehensive emergency management plan is subject to review and approval by the

local emergency management agency. During its review, the local emergency management agency must ensure that the following agencies, at a minimum, are given the opportunity to review the plan: the Department of Elder Affairs, the Department of Health, AHCA and the Department of Community Affairs. The local emergency management agency must complete its review within 60 days and either approves the plan or advises the facility of necessary revisions.

Rule 59A-4.126, F.A.C., incorporates by reference a publication (AHCA 3110-6006, March 1994) which lists the minimum criteria for a nursing home's CEMP. The CEMP must state the procedures to ensure that emergency power, whether natural gas or diesel, is supplied to the nursing home. If the fuel supply is natural gas, the plan must identify alternate means should loss of power occur that would affect the natural gas system. The plan must state the capacity of the emergency fuel system.

#### C. SECTION DIRECTORY:

Section 1. Creates s. 400.0627, F.S., to provide state financial assistance to eligible nursing homes to upgrade their emergency electrical power system capacity.

Section 2. This bill provides that an unspecified sum of money shall be appropriated during the 2006-07 fiscal year from the General Revenue Fund to AHCA for the purpose of reimbursing eligible nursing homes for building or modifying their emergency electrical power system capacity to fully operate during and after an emergency.

Section 3. Provides that the bill takes effect upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None

##### 2. Expenditures:

The bill appropriates an, as yet, unspecified sum from the General Revenue Fund to implement the provisions of this bill. According to AHCA, the average nursing home with 120 beds is about 50,000 square feet or about 400 square feet per bed. AHCA assumes that 47,700 nursing home beds out of a total of 84,000 beds will be eligible for this grant and if each bed requires approximately 400 square feet of building to house the bed and its support functions, there could be as much as 19 million square feet of building to supply with emergency electrical power if all eligible nursing homes took advantage of the program. Based on current estimates from the industry, AHCA estimates that the total cost to equip all of these facilities with a supplemental emergency electrical power system would cost an average of \$3.00 per square foot or approximately \$57 million.

Using these assumptions an electrical generator and modifications for a 120 bed nursing home with 50,000 square feet of space would cost \$150,000.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None

##### 2. Expenditures:

None

## C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If implemented the bill should have a positive economic effect on the business sector the sells, installs and provides maintenance for large electrical generators. Depending on the size of the facility, and decisions regarding how much of the facility's normal electric needs should be met by emergency electric generators, costs can vary widely. The cost for a large facility to purchase large fixed diesel generators that will automatically detect loss of grid power and immediately start up to provide uninterrupted emergency supplemental power to all of the facility's regular electrical needs can range from \$10,000 to \$100,000+. Maintenance costs for generators can also vary widely. Most generator manufacturers advise that generators be tested and run at least once monthly to ensure they will be operational when needed. Depending on the size of the generator, fuel costs can also vary widely.<sup>4</sup>

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take any action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

#### 2. Other:

None

### B. RULE-MAKING AUTHORITY:

The bill does not provide specific rule authority however, s. 400.23(2), F.S., gives AHCA the authority to adopt and enforce rules to implement part II (related to nursing homes) of chapter 400, F.S.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

A key feature of the bill is to provide electrical generators to a nursing home so that the facility "can fully operate" during and after an emergency. However, the bill does not define "fully operate".

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

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<sup>4</sup> U.S. Department of Homeland Security, U. S. Coast Guard <http://www.uscg.mil/hq/g-/mp/pdf/Best%20Practice%20Backup%20Generators.pdf>: