

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1269 w/CS Nursing Home Firesafety
SPONSOR(S): Gardiner & Other
TIED BILLS: **IDEN./SIM. BILLS:** 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 | | | |
| 4) | | | |
| 5) | | | |

SUMMARY ANALYSIS

This bill requires that all nursing homes be protected by automatic sprinkler systems by 2009. The bill provides rule authority to the Division of the State Fire Marshall and provides for administrative sanctions against a nursing home that is in violation of the provisions.

The Agency for Health Care Administration estimates that the total cost for nursing homes to comply with these provisions will be \$4.41 million (revised estimate on 3-11-04). The agency allocates the possible cost to Medicaid over the five years available for facilities to come into compliance and estimates a yearly impact to Medicaid of approximately \$395,452 or \$162,531 in General Revenue and \$232,921 in Medical Care Trust Fund.

The bill takes effect July 1, 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 creates a new standard for nursing homes that will be monitored and enforced.

B. EFFECT OF PROPOSED CHANGES:

The changes should result in enhanced safety for residents of nursing homes because over time every facility will have an automatic fire sprinkler system in place.

Background

Automatic fire sprinklers have been in use in the U.S. since 1874. Installation of fire sprinklers can provide discounts on insurance premiums. Concerns have been raised about water damage from sprinkler systems that sprinklers only protect property, not life, and that smoke detectors are sufficient fire safety. According to the American Fire Sprinkler Association, these concerns are mostly "myths". They report that:

- Water damage from a home sprinkler system will be much less severe than the damage caused by water from fire-fighting hose lines or smoke and fire damage if the fire goes unabated. Quick response sprinklers release 8-24 gallons of water per minute compared to 50-125 gallons per minute released by a fire hose.
- Smoke detectors save lives by providing a warning system but can do nothing to extinguish a growing fire or protect those physically unable to escape on their own, such as the elderly or small children. As the percent of homes in America that were "protected" with smoke detectors increased from zero to more than 70%, the number of fire deaths in homes did not significantly decrease.
- Sprinklers provide a high level of life safety. Statistics demonstrate that there has never been any multiple loss of life in a fully sprinklered building. Property losses are 85% less in residences with fire sprinklers compared to those without sprinklers. The combination of automatic sprinklers and early warning systems in all buildings and residences could reduce overall injuries, loss of life, and property damage by at least 50%.

With recent news reports of a tragic fire in a Tennessee nursing home, a Connecticut nursing home, and of a fire in an Orlando, Florida nursing homes have raised the issue of fire safety on the agenda of state fire experts. The State Fire Marshall has reported that this is a critical safety issue for the state. The Tennessee fire killed 8 people, and 16 patients were killed in the Connecticut fire. Officials in those two states reported that there were no sprinkler systems in the building, but that buildings were "up to code". In the Nashville incident, Assistant Fire Chief Lee Bergeron said, "Definitely, sprinklers would have subdued the fire quicker. It would have eliminated the smoke that we generated, and it would have made a difference in this fire."

According to information gathered by the Agency for Health Care Administration, 35 nursing homes with 4,300 beds are either partially sprinklered or are completely without sprinklers. The current statute (sec. 400.232 and sec. 633.022) requires nursing homes to comply with the National Fire Protection Act

(NFPA), 2000 ed. The NFPA exempts certain existing nursing homes under certain conditions from the requirement to install automatic sprinkler systems.

Retrofitting & Loan Guarantee Program

The Agency for Health Care Administration estimates based on a survey of each licensed facility that 35 nursing homes will need to retrofit their physical plants or meet the standards in the bill. That cost is projected to total approximately \$4 million dollars. To assist facilities in accomplishing the retrofitting, the Chief Financial Officer and the State Fire Marshall recommend the creation of a loan guarantee program.

The loan guarantee would be funded with \$4 million dollars from the Insurance Regulatory Trust Fund. The State Fire Marshall would competitively select private financial institutions that would provide loans to the affected nursing homes. The loan guarantee program makes it easier for nursing homes to find a loan for the necessary capital improvements and increases the likelihood that the cost of the loan will be quite competitive. The State Fire Marshall will only approve loans for fire protection plans that meet the Fire Safety Code. The loan guarantee program would be open for applications until December 2005 and the maximum loan term is 10 years. Each guarantee would be limited to 50 percent of the principle, and the state would hold a security interest in the property for the duration of the loan.

C. SECTION DIRECTORY:

Section 1. The bill amends section 633.022, F.S., Uniform Firesafety Standards. The bill provides that notwithstanding any provision to the contrary, each licensed nursing home will have an approved, supervised automatic sprinkler system in accordance with section 9 of the National Fire Protection Association, Inc. Life Safety Code.

The bill provides an implementation schedule that requires that "hazardous areas" be protected by the sprinkler system by December 31, 2007; and, the entire nursing home must be protected no later than December 31, 2009. The division is authorized to grant up to two one-year extensions of the time limits for nursing homes that have not been able to comply for reasons "beyond its control". The division is authorized to adopt rules to enforce this subsection and provides that nursing homes that are not in compliance are subject to administrative action by the division.

Section 2. The bill creates section 633.024, F.S., that expresses legislative intent related to the creation and operation of a limited loan guarantee program to assist nursing homes in retrofitting for sprinkler systems.

Section 3. The bill creates 633.0245, F.S., the State Fire Marshall Nursing Home Fire Protection Loan Guarantee Program. The loan guarantee program is funded from the existing Insurance Regulatory Trust Fund. State dollars would be expended only in the event of a default by a nursing home provider.

Section 4. This act takes effect July 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

This is based on an updated fiscal analysis from AHCA received March 11, 2004.

If the costs associated with retrofitting currently exempted nursing homes are passed on in the Medicaid cost-report, the state share (General Revenue) could be approximately \$162,531 per year for the five years of implementation.

- That calculation is based on a cost of \$3 per square foot
- 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 FRVS
- No providers are limited to their Per Bed Standard Limitation
- All providers are 65% on their FRVS Indexing Curve
- Allocating the costs over the five and one-half years allowing for implementation for a total cost per year

The Office of the State Fire Marshall would administer the Nursing Home Fire Protection Loan Guarantee Program. The Office of the State Fire Marshall reports that they are able to operate the loan program within existing resources. The guarantee account is funded from funds and earned interest from the existing Insurance Regulatory Trust Fund. Dollars from the loan guarantee fund would be expended only if a nursing home defaults on its loan agreement with a private qualified public depositor in Florida.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None are projected.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Nursing homes that are not compliant will have to install sprinkler systems. Some of those costs may be reimbursed by Medicaid. The estimate is approximately \$4.4 million dollars.

D. FISCAL COMMENTS:

The United States House of Representatives and the 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 "five year property" for the purpose of depreciation. Some experts say that this much shorter period of depreciation 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 if this legislation is passed, sprinkler improvements can be depreciated at

\$20,000 a year for five years, as opposed to the current tax treatment that would require the depreciation be calculated over thirty years.¹

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

B. RULE-MAKING AUTHORITY:

The division of the State Fire Marshall is granted rule making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

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 Marshall Nursing Home Fire Protection Loan Guarantee Program" to assist nursing homes that need to be retrofitted to comply with the provisions of this bill. The loan guarantee is funded from the Insurance Regulatory Trust Fund. By providing a state guarantee, nursing homes should be able to 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."

¹ Reported in SprinklerNet: a publication of the American Fire Sprinkler Association. Senate Bill 1566