

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.	<u>Cooper</u>	<u>Yeatman</u>	<u>CP</u>	<u>Fav/CS</u>
2.	<u>Parham</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable</u>
3.	_____	_____	<u>AGG</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill requires all public swimming pools to have child-safety features including a permanent barrier enclosing the pool, self closing gates for pedestrians, and lockable gates other than pedestrian gates. County health departments are required to inspect the barriers and other safety features and must immediately close a pool that is not in compliance. A pool owner or operator who fails to install and maintain the equipment required by this bill could be subject to an administrative fine not to exceed \$1,500. The bill allows the Department of Health (DOH) to recover attorney's fees and costs when they prevail in an enforcement action pursuant to the bill.

The bill specifies that the safety requirements in the bill do not apply to existing pools at any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings, which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, or which is advertised as a place regularly rented to guests.

The safety requirements in the bill apply to all public pools operated or constructed on or after January 1, 2005, except that pools in operation on that date must be brought into compliance by April 1, 2005.

The bill amends s. 514.0115, Florida Statutes.

The bill creates s. 514.0305, 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, promote innovation and new technology, and help 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 DOH 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. DOH 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.

Under s. 514.031, F.S., it is unlawful for a person or public body to operate a public swimming pool without a valid permit from DOH. A person or public body must file an application with DOH with a description of the structure; the source and supply of water; the method and manner of water purification, treatment, disinfection, and heating; safety equipment and standards to be used; measures to ensure personal cleanliness of bathers; and other pertinent information deemed necessary by DOH.

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 DOH as part of the operations permit. A portable pool may not be used as a public pool.

DOH also reports that nationally, drowning was the leading cause of death among children aged 1-4 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., relating to public pools and safety barriers.

Subsection (1) requires public swimming pools to be equipped with:

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

Subsection (2) requires the county health department to inspect the barriers and other equipment required by the bill during each routine inspection and requires an inspector to immediately close a pool that does not meet the requirements of this section. The owner or operator of a public pool that is closed by an inspector for failure to have and maintain the equipment required by this bill must correct the deficiencies or be subject to an administrative fine not to exceed \$1,500.

This subsection provides that DOH is to be awarded attorney's fees at the rate of \$150 per attorney hour as well as the costs of litigation when the department prevails in an enforcement action pursuant to this section and provides that attorney's fees and litigation costs shall be awarded against the public pool operator by the presiding officer of any proceeding before the Division of Administrative Hearings or before a hearing officer appointed by DOH.

Subsection (3) provides that the definitions in s. 515.25, F.S., apply to this section and are incorporated by reference except that the term "public swimming pool" is defined as provided in s. 514.011(2), F.S. 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), F.S. 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; and
- *Young child* means any person less than 6 years of age.

Subsection (4) provides that the safety requirements in the bill apply to all public pools operated or constructed on or after January 1, 2005, except that pools in operation on that date must be brought into compliance by April 1, 2005.

Subsection (5) provides that this section does not apply to existing pools at any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings, which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, or which is advertised as a place regularly rented to guests.

Subsection (6) provides rule authority to DOH to administer the provisions of this section.

Section 2. Amends s. 514.0115(2), F.S., providing that pools in condominium complexes which are exempt from supervision or regulation under s. 514.0115(2), F.S., are subject to the requirements of the bill.

Section 3. Provides that the bill shall take effect July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Municipalities and counties that own and or operate public swimming pools will incur the cost of complying with the requirements of the bill. Without information on the cost, it is not possible to know whether the requirements meet the threshold for an impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Under s. 514.033, F.S., the fee schedule for modification of original construction of a public swimming pool is not less than \$100 and not more than \$150. An owner or operator of a public swimming pool that had to modify original construction to meet the requirements of this bill would incur that fee.

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. According to DOH, 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.

According to DOH, 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.

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