

# 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: Community Affairs Committee

BILL: SB 112

SPONSOR: Senator Constantine

SUBJECT: Hospice Facilities

DATE: April 15, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harkey	Wilson	HE	<b>Fav/1 amendment</b>
2.	Vickers	Yeatman	CA	<b>Favorable</b>
3.			HA	
4.				
5.				
6.				

## Please see last section for Summary of Amendments

Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

### I. Summary:

This bill requires a licensed hospice to be a not-for-profit corporation that is exempt from federal taxation under s. 501(c)(3) of the Internal Revenue Code.

The bill also requires the construction and renovation of hospice facilities to be governed by the Florida Building Code.

This bill amends ss. 553.73, 400.605, and 400.601, F.S. The bill creates s. 400.6055, F.S.

### II. Present Situation:

#### The Florida Building Code

Part IV of ch. 553, F.S., creates the Florida Building Commission and requires the commission to adopt by rule the Florida Building Code. Under s. 553.73, F.S, the Florida Building Code must contain or incorporate by reference all laws and rules which pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and enforcement of such laws and rules, except as otherwise provided in that section.

## **Requirements for Hospice Licensure**

Hospices are licensed under pt. VI of ch. 400, F.S. Under s. 400.601(3), F.S., *hospice* is defined as “a centrally administered corporation not for profit, as defined in ch. 617, F.S., providing a continuum of palliative and supportive care for the terminally ill patient and his or her family.” A *corporation not for profit* is defined in s. 617.01401(5), F.S., as a corporation no part of the income or profit of which is distributable to its members, directors, or officers. However, s. 617.0505, F.S., does permit such a corporation to make distributions to its members upon dissolution or final liquidation of the corporation. Florida has 42 licensed hospices, most of which are operated as not-for-profit corporations.

Section 400.602(5), F.S., provides that any hospice operating in corporate form exclusively as a hospice, incorporated on or before July 1, 1978, may be transferred to a for-profit or not-for-profit entity, and may transfer the license to that entity. Subsection (6) provides that notwithstanding the definition of hospice in s. 400.601(3), F.S., at any time after July 1, 1995, any entity entitled to licensure under s. 400.602(5), F.S., may obtain a license for up to two additional hospices in accordance with the other requirements of pt. VI of ch. 400, F.S., and upon receipt of any certificate of need that may be required under the provisions of ss. 408.031-408.045, F.S. One company, VITAS, has operated for-profit hospices in Florida since the 1980s under the exception in s. 400.602(5) and (6), F.S. VITAS currently operates 5 hospices in Florida.

## **Certificate-of-Need Review for Hospices**

The establishment of a hospice or hospice inpatient facility is subject to certificate-of-need (CON) review under s. 408.036(1)(d), F.S. A special provision applies when a CON application is made to establish or expand a hospice. Under s. 408.043(2), F.S., the need for such hospice must be determined on the basis of the need for, and availability of, hospice services in the community. The formula on which the CON is based must discourage regional monopolies and promote competition. The inpatient hospice care component of a hospice which is a freestanding facility, or a part of a facility, which is primarily engaged in providing inpatient care and related services and is not licensed as a health care facility must also be required to obtain a CON. Provision of hospice care by any current provider of health care is a significant change in service and therefore requires a CON for such services.

## **Charitable Organizations that Are Exempt from Federal Taxation**

To be a tax-exempt charitable organization under s. 501(c)(3) of the Internal Revenue Code, an organization must be organized and operated exclusively for charitable, religious, educational, scientific or literary purposes. In addition, organizations that are exempt from s. 501(c)(3) of the Internal Revenue Code must have their assets permanently dedicated to the exempt purpose. If the corporation were to be dissolved, the assets would have to be distributed for the exempt purpose or to the federal, state or local government for a public purpose.<sup>1</sup>

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<sup>1</sup> “Tax Information for Charitable Organizations”. U.S. Internal Revenue Service. Readable at <http://www.irs.gov/charities/charitable/article/0,,id=96099,00.html>

### III. Effect of Proposed Changes:

**Section 1.** Amends s. 553.73, F.S., to make hospice residential and inpatient facilities and units subject to the provisions of the Florida Building Code. AHCA will provide technical assistance to the Florida Building Code Commission and to the Technical Advisory Committee for Special Occupancies of the Florida Building Code with respect to physical plant standards for hospice facilities and units and the updating of the Florida Building Code to include these facilities and units.

**Section 2.** Amends s. 400.605, F.S., to delete a requirement that the Department of Elderly Affairs adopt rules for physical plant standards for hospice residential and inpatient facilities and units. These rules will be replaced by the requirements of the Florida Building Code.

**Section 3.** Amends the definition of *hospice* in s. 400.601, F.S., to require a hospice to be a not-for-profit corporation exempt from federal taxation under s. 501(c)(3) of the Internal Revenue Code. It is not known how many hospices organized as not-for-profit corporations under Florida law would have to obtain the 501(c)(3) exemption, or if any of these hospices would not be able to obtain such an exemption. The bill does not provide a “grandfathering provision” that would exempt existing hospices that do not currently meet this requirement. According to AHCA, the change in the definition would have no impact on the few hospices that are permitted to be for-profit under s. 400.602(5) and (6), F.S.

**Section 4.** Creates s. 400.6055, F.S., to require the construction and renovation of a hospice residential or inpatient facility to comply with the Florida Building Code. Thus, AHCA will be required to assume the responsibility for placing the physical plant requirements into the Florida Building Code and updating the appropriate section of the Florida Building Code through the Technical Advisory Committee for Special Occupancies of the Florida Building Code Commission.

**Section 5.** Provides an effective date of July 1, 2005.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

The provisions of this bill have no 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:**

None.

**B. Private Sector Impact:**

A hospice that is not organized as a not-for profit corporation that is tax-exempt under s. 501(c)(3) of the Internal Revenue Code would incur a cost for organizing in that manner.

**C. Government Sector Impact:**

ACHA does not anticipate a cost for implementing the provisions of this bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

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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## **VIII. Summary of Amendments:**

### **Barcode 192168 by Health Care:**

Removes the requirement that a hospice must be exempt from federal taxation under s. 501(c)(3) of the Internal Revenue Code.

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