

CHAMBER ACTION

1 The Judiciary Committee recommends the following:

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3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to nursing homes; amending s. 400.23,  
7 F.S.; providing for alternative bed locations in nursing  
8 home rooms and providing criteria for bed placement;  
9 requiring a signed statement from the resident or  
10 representative if the alternative bed placement is not in  
11 compliance with the Florida Building Code; requiring the  
12 facility to maintain a log of alternative bed placements  
13 and to retain the signed statements; requiring the nursing  
14 home to notify the Agency for Health Care Administration  
15 with respect to such practice; amending s. 633.022, F.S.;  
16 requiring nursing homes to be protected by certain  
17 automatic sprinkler systems; providing a schedule;  
18 authorizing the Division of State Fire Marshal to grant  
19 certain time extensions; authorizing the division to adopt  
20 certain rules; providing for administrative sanctions  
21 under certain circumstances; requiring adjustments to  
22 certain provider Medicaid rates for reimbursement for  
23 Medicaid's portion of costs to meet certain requirements;

24 requiring funding for such adjustments to come from  
 25 existing nursing home appropriations; creating s. 633.024,  
 26 F.S.; providing legislative findings and intent; creating  
 27 s. 633.0245, F.S.; authorizing the State Fire Marshal to  
 28 enter into an investment agreement with public  
 29 depositories to establish the State Fire Marshal Nursing  
 30 Home Fire Protection Loan Guarantee Program as a limited  
 31 loan guarantee program to retrofit nursing homes with fire  
 32 protection systems; providing investment and agreement  
 33 limitations; requiring the State Fire Marshal to solicit  
 34 requests for proposals; providing for application  
 35 requirements and procedures; providing for review and  
 36 approval by the State Fire Marshal; providing application  
 37 requirements and procedures for program loans by public  
 38 depositories; providing deadlines and limitations;  
 39 limiting certain claims for loss under certain  
 40 circumstances; providing a definition; authorizing the  
 41 State Fire Marshal to adopt rules; providing an effective  
 42 date.

43

44 Be It Enacted by the Legislature of the State of Florida:

45

46 Section 1. Paragraph (a) of subsection (2) of section  
 47 400.23, Florida Statutes, is amended to read:

48 400.23 Rules; evaluation and deficiencies; licensure  
 49 status.--

50 (2) Pursuant to the intention of the Legislature, the  
 51 agency, in consultation with the Department of Health and the

52 Department of Elderly Affairs, shall adopt and enforce rules to  
 53 implement this part, which shall include reasonable and fair  
 54 criteria in relation to:

55 (a) The location of the facility and housing conditions  
 56 that will ensure the health, safety, and comfort of residents,  
 57 including an adequate call system. In making such rules, the  
 58 agency shall be guided by criteria recommended by nationally  
 59 recognized reputable professional groups and associations with  
 60 knowledge of such subject matters. The agency shall update or  
 61 revise such criteria as the need arises. The agency may require  
 62 alterations to a building if it determines that an existing  
 63 condition constitutes a distinct hazard to life, health, or  
 64 safety. In performing any inspections of facilities authorized  
 65 by this part, the agency may enforce the special-occupancy  
 66 provisions of the Florida Building Code and the Florida Fire  
 67 Prevention Code which apply to nursing homes. Residents or their  
 68 representatives shall be able to request a change in the  
 69 placement of the bed in their room, provided that at admission  
 70 they are presented with a room that meets requirements of the  
 71 Florida Building Code. The location of a bed may be changed if  
 72 the requested placement does not infringe on the resident's  
 73 roommate or interfere with the resident's care or safety as  
 74 determined by the care planning team in accordance with facility  
 75 policies and procedures. In addition, the bed placement may not  
 76 be used as a restraint. Each facility shall maintain a log of  
 77 resident rooms with beds that are not in strict compliance with  
 78 the Florida Building Code in order for such log to be used by  
 79 surveyors and nurse monitors during inspections and visits. Any

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80 resident or resident representative who requests that a bed be  
 81 moved shall sign a statement indicating that they understand the  
 82 room will not be in compliance with the Florida Building Code,  
 83 but they would prefer to exercise their right to self-  
 84 determination. The statement must be retained as part of the  
 85 resident's care plan. Any facility that offers this option shall  
 86 notify the agency of this practice by submitting a letter signed  
 87 by the nursing home administrator of record and a copy of the  
 88 facility's policies and procedures. The agency is directed to  
 89 provide assistance to the Florida Building Commission in  
 90 updating the construction standards of the code relative to  
 91 nursing homes.

92 Section 2. Subsection (4) is added to section 633.022,  
 93 Florida Statutes, to read:

94 633.022 Uniform firesafety standards.--The Legislature  
 95 hereby determines that to protect the public health, safety, and  
 96 welfare it is necessary to provide for firesafety standards  
 97 governing the construction and utilization of certain buildings  
 98 and structures. The Legislature further determines that certain  
 99 buildings or structures, due to their specialized use or to the  
 100 special characteristics of the person utilizing or occupying  
 101 these buildings or structures, should be subject to firesafety  
 102 standards reflecting these special needs as may be appropriate.

103 (4)(a) Notwithstanding any provision of law to the  
 104 contrary, each nursing home licensed under part II of chapter  
 105 400 shall be protected by an approved, supervised automatic  
 106 sprinkler system in accordance with section 9 of National Fire

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107 Protection Association, Inc., Life Safety Code, in accordance  
 108 with the following schedule:

109 1. Each hazardous area of each nursing home shall be  
 110 protected by an approved, supervised automatic sprinkler system  
 111 by no later than December 31, 2008.

112 2. Each entire nursing home shall be protected by an  
 113 approved, supervised automatic sprinkler system by no later than  
 114 December 31, 2010.

115 (b) The division may grant up to two 1-year extensions of  
 116 the time limits for compliance in subparagraph (a)2. if the  
 117 division determines that the nursing home has been prevented  
 118 from complying for reasons beyond its control.

119 (c) The division is authorized to adopt any rule necessary  
 120 for the implementation and enforcement of this subsection. The  
 121 division shall enforce this subsection in accordance with the  
 122 provisions of this chapter, and any nursing home licensed under  
 123 part II of chapter 400 that is in violation of this subsection  
 124 may be subject to administrative sanctions by the division  
 125 pursuant to this chapter.

126 (d) Adjustments shall be made to the provider Medicaid  
 127 rate to allow reimbursement over a 5-year period for Medicaid's  
 128 portion of the costs incurred to meet the requirements of this  
 129 subsection. Funding for this adjustment shall come from existing  
 130 nursing home appropriations.

131 Section 3. Section 633.024, Florida Statutes, is created  
 132 to read:

133 633.024 Legislative findings and intent; ensuring  
 134 effective fire protection of vulnerable nursing home residents

135 essential; retrofit of existing nursing homes expedited by  
 136 limited state loan guarantee; funding through Insurance  
 137 Regulatory Trust Fund.--

138 (1) It is the intent of the Legislature to promote the  
 139 essential public purpose of ensuring effective fire protection  
 140 for the safety and welfare of nursing home residents of this  
 141 state who, because of their inability to protect themselves, are  
 142 most vulnerable to catastrophic injury or death in the event of  
 143 a fire. The Legislature finds that this purpose is served by  
 144 requiring the installation of appropriate fire protection  
 145 systems in all nursing home facilities in this state that do not  
 146 currently have fire protection systems in operation for the  
 147 protection of their residents. The Legislature finds that the  
 148 high capital cost of retrofitting appropriate fire protection  
 149 systems at nursing home facilities not originally designed with  
 150 fire protection systems has discouraged the owners and operators  
 151 of such facilities from doing so. The Legislature therefore  
 152 finds that state action to provide a limited state guarantee of  
 153 loans covering these capital costs will expedite the immediate  
 154 installation of fire protection systems at facilities that lack  
 155 such systems and thereby ensure effective protection for those  
 156 nursing home populations that are now most vulnerable to the  
 157 catastrophic effects of fire.

158 (2) Because the Insurance Regulatory Trust Fund is funded  
 159 by the proceeds of fire insurance premiums written in this  
 160 state, the Legislature finds that it is in the public interest  
 161 for moneys held in the Insurance Regulatory Trust Fund to be  
 162 used to fund the limited loan guarantee program that mobilizes

163 private funding for the retrofitting of fire protection systems  
 164 at unprotected nursing homes located in this state.

165 Section 4. Section 633.0245, Florida Statutes, is created  
 166 to read:

167 633.0245 State Fire Marshal Nursing Home Fire Protection  
 168 Loan Guarantee Program.--

169 (1) The State Fire Marshal, with the assistance of the  
 170 Division of Treasury of the Department of Financial Services,  
 171 may enter into an investment agreement concerning the investment  
 172 of certain funds held in the Insurance Regulatory Trust Fund for  
 173 the purpose of establishing a limited loan guarantee program to  
 174 be known as the State Fire Marshal Nursing Home Fire Protection  
 175 Loan Guarantee Program. The investment must be limited as  
 176 follows:

177 (a) Not more than \$4 million of the balance in the  
 178 Insurance Regulatory Trust Fund in any fiscal year may be at  
 179 risk at any time for the purpose of limited loan guarantees.

180 (b) Such funds at risk at any time may not be used to  
 181 guarantee any limited loan guarantee agreement for a period  
 182 longer than 10 years.

183 (c) No limited loan guarantee agreement based on invested  
 184 funds may be entered into after December 1, 2006.

185 (2) The State Fire Marshal may enter into limited loan  
 186 guarantee agreements with one or more financial institutions  
 187 qualified as public depositories in this state. Such agreements  
 188 shall provide a limited guarantee by the State of Florida  
 189 covering no more than 50 percent of the principal sum loaned by  
 190 such financial institution to an eligible nursing home, as

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191 defined in subsection (10), for the sole purpose of the initial  
 192 installation at such nursing home of a fire protection system,  
 193 as defined in s. 633.021(8), approved by the State Fire Marshal  
 194 as being in compliance with the provisions of s. 633.022 and  
 195 rules adopted thereunder.

196 (3) The State Fire Marshal shall solicit requests for  
 197 proposals from qualified financial institutions willing to fund  
 198 loans to eligible nursing homes for the installation of fire  
 199 protection systems approved by the State Fire Marshal under the  
 200 State Fire Marshal Nursing Home Fire Protection Loan Guarantee  
 201 Program. Each request for proposal shall specify the terms and  
 202 conditions under which the responding institution is prepared to  
 203 make loans under the program, including, but not limited to,  
 204 applicable interest rates, repayment terms, credit policies,  
 205 loan fees, and proposed security interests to be executed by the  
 206 borrower. After evaluation of all requests for proposals, the  
 207 State Fire Marshal shall select one or more responding  
 208 institutions as designated lenders under the program.

209 (4) The State Fire Marshal shall prescribe by rule an  
 210 application form for participation in the State Fire Marshal  
 211 Nursing Home Fire Protection Loan Guarantee Program to be  
 212 submitted by each eligible nursing home that desires to install  
 213 a fire protection system funded by a loan from a designated  
 214 lender under the program. Nothing in this section shall be  
 215 deemed to require an eligible nursing home to do business with a  
 216 designated lender. At a minimum, the application shall require  
 217 each applicant to provide the following information:

218 (a) The name and address of the eligible nursing home.



219        (b) The name and address of the owner of the nursing home  
 220 or, if the owner is a partnership, the name and address of the  
 221 general partner.

222        (c) The lessee of the nursing home premises, if any.

223        (d) A complete description of the structure or structures  
 224 where the fire protection system is to be installed, including  
 225 age, physical dimensions, overall square footage, a real extent  
 226 of proposed coverage areas, and other relevant information  
 227 concerning the premises.

228        (e) Bed capacity of the nursing home, including beds  
 229 eligible for Medicare or Medicaid reimbursement.

230        (f) A statement regarding the availability to the  
 231 applicant of third-party reimbursement for installation of the  
 232 fire protection system.

233        (g) The location of closest water mains and fire hydrants,  
 234 if any.

235        (h) Complete sealed drawings showing the fire protection  
 236 system to be installed.

237        (i) Cost documentation, with a separate breakdown of cost  
 238 for labor and materials.

239        (j) Verification of the application by the applicant.

240        (5) The State Fire Marshal shall evaluate each application  
 241 submitted under this section to determine whether the proposed  
 242 fire protection system is feasible for installation as proposed  
 243 and complies with all applicable firesafety code provisions. An  
 244 application may not be approved without a positive determination  
 245 by the State Fire Marshal under this subsection. If the State  
 246 Fire Marshal is able to determine that the proposed fire

247 protection system is feasible and complies with applicable  
 248 firesafety codes, the application shall be approved for  
 249 submission to one or more lenders for funding. If the  
 250 application is insufficient, the State Fire Marshal shall notify  
 251 the applicant in writing and identify areas of deficiency that  
 252 must be corrected in order for the application to be approved.

253 (6) As soon as practicable after approval, each approved  
 254 application shall be submitted by the State Fire Marshal to one  
 255 or more designated lenders for funding. Upon request of a  
 256 designated lender, an approved applicant shall provide the  
 257 lender with documentation of its credit history and financial  
 258 status. If, after review of the applicant's documentation, a  
 259 lender refuses to fund the application, the lender shall  
 260 promptly notify the applicant and the State Fire Marshal in  
 261 writing of any reasons for its action. If the lender agrees to  
 262 fund the application, the lender shall notify the applicant and  
 263 the State Fire Marshal and schedule a closing date for the loan.

264 (7) At closing, the applicant shall execute appropriate  
 265 documents necessary to provide the lender and the State Fire  
 266 Marshal with a security interest in the property where the fire  
 267 protection system is to be installed. The State Fire Marshal  
 268 shall then execute a limited loan guarantee in favor of the  
 269 lender guaranteeing no more than 50 percent of the face value of  
 270 the loan.

271 (8) A designated lender covered by a limited state  
 272 guarantee for a loan under this section is not entitled to file  
 273 a claim for loss pursuant to the guarantee unless all reasonable  
 274 and normal remedies available and customary for lending

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275 institutions for resolving problems of loan repayments are  
 276 exhausted. If the lender has received collateral security in  
 277 connection with the loan, the lender must first exhaust all  
 278 available remedies against the collateral security.

279 (9) No application for participation in the State Fire  
 280 Marshal Nursing Home Fire Protection Loan Guarantee Program may  
 281 be accepted by the State Fire Marshal after June 30, 2006.

282 (10) For purposes of this section, "eligible nursing home"  
 283 means a nursing home facility that provides nursing services as  
 284 defined in chapter 464, is licensed under part II of chapter  
 285 400, and is certified by the Agency for Health Care  
 286 Administration to lack an installed fire protection system as  
 287 defined in s. 633.021(8).

288 (11) The State Fire Marshal may adopt any rules necessary  
 289 to implement the provisions of this section.

290 Section 5. This act shall take effect July 1, 2005.