# 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: Domestic Security Committee

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| BILL: | CS/SB 298 |
| SPONSOR: | Domestic Security Committee, Senator Margolis and others |
| SUBJECT: | Nursing Homes/Emergency Power Systems |
| DATE: | March 15, 2006 REVISED: |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Bedford | Wilson | HE | **Fav/2 amendments** |
| 2. | Pardue | Skelton | DS | **Fav/CS** |
| 3. | | | HA | |
| 4. | | | WM | |
| 5. | | | | |
| 6. | | | | |

## I. Summary:

This committee substitute provides legislative intent to encourage all nursing homes to have emergency electrical power system capacity to allow these facilities to remain fully operational during and after an emergency and to provide care to residents evacuated from other nursing homes.

The bill provides for a 2-year pilot program to reimburse certain facilities for the costs of installing a quick connect electrical service entry allowing a temporary generator connection. The bill also allows for the reimbursement of the cost of a generator services contract. Such reimbursement is subject to the availability of funds appropriated for each of the 2 years of the pilot program.

The bill specifies five criteria that a nursing home must meet to be eligible for reimbursement of the costs of the emergency power system upgrade. The facility must:

- Be located in Broward, Collier, Dade, Monroe, or Palm Beach county
- 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
- Be capable of and agree to accept at least 30 residents from other nursing home facilities during an evacuation
- Have a contract with a company that is able to supply a generator when needed

This bill creates s. 400.0627, F.S.

## II. Present Situation:

**Experience of Nursing Homes During the 2004 and 2005 Hurricane Seasons**

During the 2004 and 2005 hurricane seasons, every county in Florida encountered storm related power outages. Eight hurricanes caused substantial damage to the power grid requiring several weeks in each case to fully restore service. Hurricane Wilma in 2005, for example, initially knocked out power to 3.5 million customers.[1] Eight days later on November 1, 2005, over 700,000 customers in 8 counties were still without power.[2]

During the 2004 hurricane season there were 4 hurricanes which caused evacuations of the general population in the state of Florida. This affected 56 nursing home facilities, with a total of 4,491 patients being evacuated. Hurricanes Charlie and Frances caused 10 nursing home facilities to close or be inactive. Altogether the four storms caused damage to 86 nursing home facilities. It is believed that 349 nursing home facilities lost power and switched to generators during the four hurricanes.

During the 2005 hurricane season there were four recorded hurricanes and one tropical storm 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.

Currently, there is no statutory requirement for the evacuation of residents from one nursing home facility to another. However, evacuations generally take place between like facilities. Each nursing home facility submits a Comprehensive Emergency Management Plan (CEMP) which outlines the details of where the patients will be evacuated and includes spelled out agreements between the facilities. These plans are submitted for approval by the local county emergency management agency as outlined below.

**Emergency Management**

Under s. 252.35, F.S., the Division of Emergency Management in the Department of Community Affairs is responsible for maintaining a comprehensive statewide program of emergency management and for coordinating with efforts of the federal government, other departments and agencies of state government, county and municipal governments and school boards, and private organizations that have a role in emergency management. Included is a provision to set forth policy guidance for sheltering people with special needs.

Under s. 400.23(2)(g), F.S., the Agency for Health Care Administration (AHCA) must adopt rules establishing minimum criteria for the preparation and annual update of a nursing home's

[1] Florida SERT Hurricane Wilma Situation Report No. 14, October 24, 2005.
[2] Florida Emergency Operations Center ESF-14, Hurricane Wilma Power Briefing Sheet, November 1, 2005.

CEMP after consultation with the Department of Community Affairs. At, a minimum, the rules must provide for plan components that address emergency evacuation transportation; adequate sheltering arrangements; post disaster activities, including emergency power, food, and water; post-disaster transportation; supplies; staffing; emergency equipment; individual identification of residents and transfer of records; and responding to family inquiries. Each nursing home facility is required to develop a CEMP, based on the criteria outlined by AHCA, and submit the CEMP to the local county for approval. The CEMP 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 Elderly Affairs, the Department of Health, the Agency for Health Care Administration, and the Department of Community Affairs. Also, appropriate volunteer organizations must be given the opportunity to review the plan. The local emergency management agency must complete its review within 60 days and either approve the plan or advise 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.

**Requirements for Nursing Home Licensure**

Nursing Homes are licensed under part II of ch. 400, F.S. Under s. 400.232, F.S., the design, construction, erection, alteration, modification, repair, and demolition of all public and private health care facilities are governed by the Florida Building Code and the Florida Fire Prevention Code under ss. 553.73 and 633.022, F.S. In addition to the requirements of ss. 553.79 and 553.80, F.S., which govern permits, applications, issuance, inspections, and enforcement, AHCA must review the facility plans and survey the construction of nursing homes.

Since July 1982, all nursing home facilities licensed under part II of ch. 400, F.S., have been required to have an onsite Essential Electrical System (EES) with an onsite fuel supply of up to 64 hours. The design, installation, operation, and maintenance of this EES is reviewed by AHCA. The EES must meet the minimum codes and standards of the National Fire Protection Association (NFPA) 99, 70, and 110 as adopted by the state fire marshal, for a level I Type I EES. This 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. However, 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 NFPA codes and standards.

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 HVAC equipment as determined by the facility, for a period up to 72 hours of continuous service at actual load capacity of the generator. Since 2000, all of these codes and standards have been part of the Florida Building Code (FBC) chapter 4, section 420 as required by ch. 533, F.S. All new codes and standards and all revisions to the existing codes and standards affecting the physical plant of nursing home facilities are the sole responsibility of the Florida Building Code Commission (FBC). The FBC is not subject to waiver or variance via ch. 120, F.S.

Of the 677 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.

**Class I Deficiency**

In accordance with s. 400.23(7), F.S., AHCA conducts annual surveys at all nursing home facilities at least every 15 months to evaluate and make determinations as to the degree of compliance with state and federal regulations. Findings of deficient practice are classified according to the nature and the scope of the deficiency.

Under s. 400.23(8)(a), F.S., a class I deficiency is a deficiency that AHCA determines presents a situation 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. This deficiency is subject to civil penalties as outlined in the statute.

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 AHCA. The agency publishes quarterly a "Nursing Home Guide Watch List" that identifies each facility that met the criteria for a conditional license on any day within the quarter covered by the list. 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.

Currently, there are 677 licensed nursing homes in Florida. Data from the most recent 30-month period indicates that 47 facilities have received a class I deficiency. During the same time period, 149 nursing homes were included in an edition of the "Nursing Home Guide Watch List." Seventy-one (48%) of those facilities were published in multiple editions. In addition, 40 facilities are currently placed on a 6-month survey cycle.

## III. Effect of Proposed Changes:

**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.

*Subsection (1)* encourages each nursing home in this state to have an emergency electrical power system capacity that is sufficient to remain fully operational during and after an emergency. The purpose is to maintain the health and safety of nursing home residents and those who might be evacuated from other nursing homes.

*Subsection (2)* requires AHCA, by July 1, 2006, to commence a 2-year pilot program to increase the emergency electrical power capacity of nursing home facilities. The program will reimburse such facilities for the costs of installing a quick connect electrical service entry allowing a temporary generator connection. Such reimbursement is subject to the availability of funds appropriated for each of the 2 years of the pilot program.

The nursing homes must meet five criteria to be eligible: must be located in Broward, Collier, Dade, Monroe, or Palm Beach county; must not be in the hurricane evacuation zone in its county; must not have been cited for a class I deficiency within the last 30 months preceding the application for reimbursement; must be capable of and agree to accept at least 30 residents from other nursing home facilities during an evacuation; and must have a contract with a company that is able to supply a generator when needed.

- A nursing home facility must not be located within the hurricane evacuation zone of the county in which it is located. AHCA estimates that out of 147 total nursing facilities located in the pilot program area, approximately 100 nursing facilities are not located in county hurricane evacuation zones.

- This bill makes nursing homes that have been cited for any class I deficiency within the last 30 months ineligible for reimbursement. According to AHCA, there are currently 47 nursing homes in Florida that are affected that would not qualify for the upgrade because they have had a class I deficiency. Of this number AHCA estimates 5 such facilities are in the coverage area and would be ineligible for the pilot program.

- AHCA also estimates that approximately 10 additional facilities in the pilot program area would not meet agency criteria under this program.

- Based on these factors, approximately 85 facilities are eligible for participation in the pilot program. This represents approximately 10,200 nursing home beds.

- The nursing home must have the capacity, as determined by AHCA, to accept evacuees. This bill does not address what kind of policy would have to be adopted by AHCA in order to comply with federal, state and local laws regarding the safety of the nursing home patients in relationship to capacity. However, this bill provides the agency with the authority to make such determinations and administer this program. Further, the bill requires that facilities transferring evacuees shall provide staff to the receiving facility to care for transferred residents.

*Subsection (3)* provides that a nursing home must notify AHCA if is seeks to participate in the pilot program. If requesting facilities meet the criteria specified in this bill and funding is made available by the Legislature, AHCA shall reimburse facilities for the costs of installation of the quick connect system and the cost of a generator services contract. Reimbursement shall be on a first-come, first-served basis until all funds are expended.

The bill requires that the quick connect system installed be suitable for the purpose of providing electrical service entry. It must also be adequate to allow the operation of the facility under normal conditions. In order to be reimbursed, a facility must furnish AHCA with documentation that the installation is complete and was performed by a certified electrical contractor.

*Subsection (4)* requires that a participating facility ensure proper maintenance of the installation. AHCA shall be given access as needed to inspect the installation.

*Subsection (5)* does not require a nursing home facility to participate in the pilot program nor modify its existing emergency electrical power system. However, if an existing emergency electrical power system is modified as part of an installation under the pilot program, it must comply with all current codes and standards.

*Subsection (6)* provides that AHCA may adopt rules to administer the program.

**Section 2.** This bill provides for an effective date upon becoming a law.

## 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 Art. VII, s. 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 Art. 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 Art. III, Subsection 19(f) of the Florida Constitution.

## V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Facilities that are eligible for reimbursement for the costs of upgrading their emergency electrical power system capacity will benefit, if they choose to do an upgrade.

C. Government Sector Impact:

The agency estimates that it would cost $2.7 million to reimburse all eligible facilities for the costs of installing quick connect systems.

The bill also provides for reimbursement of the cost of a generator services contract. The cost of a guaranteed services contract would be subject to many variables and is unknown. Facility size and installed equipment requiring power are among those variables.

For planning purposes however, it is estimated that a 750 KW generator would be required to power a 120 bed facility's HVAC system plus other facility equipment. The cost to rent a 750KW generator for one week is estimated at $7,750. The cost to provide one week's worth of generator capacity for 85 eligible facilities is thus estimated at $660,000. Such generators would only be needed during time of power outage in the aftermath of an emergency or disaster and would not be required on a continuous basis.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

# VIII. Summary of Amendments:

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