

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower families – The bill provides increased safety options to individuals and families who either reside in or have family members residing in certain nursing home facilities.

Maintain public security – The bill provides increased health, safety and physical security of nursing home residents who reside in certain facilities before and during an emergency.

B. EFFECT OF PROPOSED CHANGES:

The bill creates s. 400.0627, F.S., providing legislative intent to encourage nursing home facilities to have an emergency electrical power system 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 Agency for Health Care Administration (agency) is required to implement a 2-year pilot program to reimburse nursing homes based on certain criteria. Participation in the pilot program is voluntary. Eligible facilities would receive state reimbursement based on available funds for the installation cost of a quick connect electrical service entry system allowing a temporary generator connection. Nursing homes that meet eligibility criteria would be reimbursed for up to one-half the cost of a generator services contract, not to exceed \$7,500 per year for each year of the pilot program.

The combined effect of installing the quick connect electrical power system and having the generator services contract would be to enable eligible nursing homes, despite utility power outages, to remain fully operational during and after an emergency and provide care to residents evacuated from other nursing facilities.

To be eligible for reimbursement, a nursing home facility must meet the following criteria:

- Be located in Bay, Broward, Collier, Miami-Dade, Escambia, Monroe, Okaloosa, Palm Beach, Santa Rosa, or Walton County.
- Not be in the hurricane evacuation zone in the county.
- Not have been cited for a class I deficiency within the 30 months preceding the commencement of the pilot project implementation.
- Have the capacity, as determined by the Agency, to receive transferred residents that are evacuated and agree to receive those transferred residents.
- Have a contract with a company that is able to supply an electrical generator.

The pilot program is funded by state General Revenue. The bill directs the agency to develop a reimbursement plan to draw down federal funds in order to expand the pilot program to other areas of the state. The plan is to be presented to the President of the Senate and the Speaker of the House of Representatives by December 31, 2007.

BACKGROUND

Hurricane Evacuation Zones

Hurricane evacuation zones are predetermined geographic areas that are likely to experience destruction or severe damage from storm surges, waves, erosion or flooding.¹ Depending on the track

¹ According to NQAA, storm surge maps reflect the worst case hurricane storm surge inundation (including astronomical high tide), regardless of the point of where the center of the hurricane (or tropical storm) makes landfall. No single hurricane will necessarily cause all of the flooding represented on evacuation maps. The data reflect only still-water saltwater flooding and do not take into

of the storm, the greater the intensity of a storm (tropical storm to Category 5 hurricane) the greater the geographic area that will experience these conditions and, therefore, need to be evacuated. The closer the nursing home is to the coast, the more likely that a nursing home will be located in an evacuation zone.

According to the agency, there are 677 licensed nursing homes in Florida representing approximately 83,000 beds. During the 2005 and 2006 hurricane seasons 23 nursing homes were evacuated representing approximately 2,900 patients being displaced. A total of 241 nursing homes lost power and switched to generators during the 2005 and 2006 hurricane seasons.²

The agency estimates approximately 122 nursing facilities are not located in county hurricane evacuation zones, and therefore, would be eligible to participate in the pilot program.³ This represents approximately 15,000 nursing home beds.

Nursing Home Licensure Standards

Section 400.23, F.S., requires the agency to conduct annual surveys at all nursing homes to evaluate and determine the degree of compliance by each licensee with the established standards adopted in rules. The agency bases its evaluation on the most recent inspection report, taking into consideration findings from other official reports, surveys, interviews, investigations, and inspections.

Findings of deficient practice are classified according to the nature and the scope of the deficiency. There are four classes of deficiencies:

- A class I deficiency is a deficiency 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.
- A class II deficiency is a deficiency that has compromised a resident's ability to maintain or accomplish his or her highest practicable physical, mental, and psychosocial well-being, as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services.
- A class III deficiency is a deficiency that will result in no more than minimal physical, mental, or psychosocial discomfort to the resident or has the potential to compromise the resident's ability to maintain or accomplish his or her highest practical physical, mental, or psychosocial wellbeing, as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services.
- A class IV deficiency is a deficiency that will result in no more than a minor negative impact on the resident.

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 the agency. 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 1 class I or class II deficiency, is placed on a 6-month survey cycle for the next 2-year period.

According to the agency, 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

account the effects of pounding waves that ride on top of the storm surge in locations exposed to wave action. Evacuation maps do not show areas that may be flooded by excessive rainfall—they only depict flooding that would occur as a result of the ocean level rising as well as estuaries and rivers that can be affected by hurricane storm surge.

² Agency for Health Care Administration, Bureau of Long Term Care staff input.

³ Agency for Health Care Administration 2007 Bill Analysis and Economic Impact statement, February 14, 2007, on file with the Committee.

edition of the "Nursing Home Guide Watch List." In addition, 40 facilities are currently placed on a 6-month survey cycle.

Evacuation and Transfer of Nursing Home Residents

Section 400.23(2)(g), F.S., requires the gency to develop rules after consultation with the Department of Community Affairs that require each nursing home to develop a comprehensive emergency management plan (CEMP). 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. The comprehensive emergency management plan 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 Elder Affairs, the Department of Health, and the Agency for Health Care Administration and the Department of Community Affairs. 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 (Agency 3110-6006, March 1994) that 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 -- Essential Electrical System

Since July 1982, all nursing home facilities licensed under part II of chapter 400, F.S., have been required by rule to have an onsite essential electrical system (EES) with an onsite fuel supply of up to 64 hours.⁴ The design, installation, operation, and maintenance of this EES are reviewed by the Agency.

The 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 National Fire Protection Association (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.

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 heating, ventilation, and air conditioning equipment as determined by the facility, for a period up to 72 hours of continuous service at actual load capacity of the generator.

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 National Fire Protection Association codes and standards.

⁴ FAC 59A-4.133 Of the 669 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 1-1/2 hours duration. These components include the fire alarm, nurse call, emergency egress lighting, exit lighting, and locking systems.

C. SECTION DIRECTORY:

Section 1. Creates s. 400.0627, F.S., providing legislative intent; requiring the Agency to establish a two-year pilot program to provide state financial assistance, to the extent that funds are appropriated, to eligible nursing home facilities to upgrade their emergency electrical power system capacity; and requiring the Agency to prepare a reimbursement plan to expand the pilot program.

Section 2. Provides that the bill takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Agency advises that each facility choosing to participate in the pilot will be required to pay a \$2,000 plan review fee per current statutes to review the facility electrical system changes necessitated by the quick connect.⁵ Assuming a participation rate of 100 percent of 122 facilities, those fees would total \$244,000 over the two year period.

	<u>2007-08</u>	<u>2008-09</u>
Plan Review Fees	\$122,000	\$122,000
7.5% GR Service Charge	<u>(\$ 9,150)</u>	<u>(\$ 9,150)</u>
Net to Health Care Trust Fund	\$112,850	\$112,850
General Revenue Fund		
7.5 % GR Service Charge	<u>\$ 9,150</u>	<u>\$ 9,150</u>
Total Revenues	\$122,000	\$122,000

2. Expenditures:

Information provided by the agency indicates that the cost to implement the pilot would be approximately \$5.0 million over the two-year period, assuming participation by 100 percent of 122 facilities. In addition, the agency advises that it will require one additional staff position to process and review the electrical system plans and requests for reimbursements.

	<u>2007-08</u>	<u>2008-09</u>
Agency (1 FTE)	\$ 62,823*	\$ 56,823
Permanent Electrical Service Entry (122 facilities @\$25,000 per facility)	\$1,525,000	\$1,525,000
Contracted Services (122 facilities@\$7,500)	<u>\$ 915,000</u>	<u>\$ 915,000</u>
Total Expenditures	\$2,502,823	\$2,496,823

*Fiscal Year 2007-08 includes \$6,000 in non-recurring funding for equipment for the new staff position.

⁵ Agency for Health Care Administration 2007 Bill Analysis and Economic Impact statement, February 14, 2007, on file with the Committee.

General Revenue Fund	\$2,389,973	\$2,383,973
Health Care Trust Fund	\$ 112,850	\$ 112,850

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If implemented, the bill should have a positive effect on businesses that develop, sell, rent, install or provide maintenance for large electrical generators.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take any action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides that the Agency for Health Care Administration may adopt rules to administer the pilot program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 6, 2007, the Health Innovation Committee adopted four amendments to the bill. These amendments do the following:

- Revises the list of counties within the pilot project as follows: Pasco, Broward, Miami-Dade, Escambia, Okaloosa, Palm Beach and Santa Rosa Counties.
- Directs the Agency for Health Care Administration to consider the most cost effective use of state dollars to provide electrical service to participating nursing homes prior to reimbursement.
- Directs the Agency for Health Care Administration to submit a report to the Senate President and the Speaker of the House of Representatives by December 31, 2008; and
- Provides an effective date subject to an appropriation.

The bill was reported favorably with four amendments.