

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Rules Committee

BILL: SB 690

INTRODUCER: Senator Richter

SUBJECT: Assisted Living Facilities

DATE: April 21, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	Favorable
2.	O'Callaghan	Stovall	HR	Favorable
3.	O'Callaghan	Phelps	RC	Pre-meeting
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill removes the requirement that the Department of Elderly Affairs (DOEA) must submit a copy of proposed rules to the Speaker of the House of Representatives, the President of the Senate, and appropriate committees of substance for review and comment prior to promulgation.

This bill substantially amends s. 429.41, F.S.

II. Present Situation:¹

An assisted living facility (ALF) is a residential establishment, or part of a residential establishment, that provides housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.² A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication.³ Activities of daily living include: ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks. An ALF may be operated for profit or not-for-profit, and can range from small houses resembling private homes to larger developments with hundreds of residential beds.

¹ A majority of the information contained the Present Situation of this bill analysis is from an interim report by the Committee on Health Regulation of the Florida Senate. See Comm. on Health Reg., The Florida Senate, *Assisted Living Facility Licensure Review* (Interim Report 2010-118) (Oct. 2009), available at http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-118hr.pdf (last visited April 11, 2011).

² Section 429.02(5), F.S.

³ Section 429.02(16), F.S.

Assisted living facilities are currently licensed by the Agency for Health Care Administration (AHCA) pursuant to part I of ch. 429, F.S., relating to assisted living facilities and part II of ch. 408, F.S., relating to the general licensing provisions for health care facilities. Assisted living facilities are also subject to regulation under chapter 58A-5 of the Florida Administrative Code. These rules are adopted by the DOEA in consultation with the AHCA, the Department of Children and Family Services, and the Department of Health, and must include minimum standards in relation to:

- The requirements for maintenance of facilities which will ensure the health, safety, and comfort of residents and protection from fire hazard;
- The preparation and annual update of a comprehensive emergency management plan;
- The number, training, and qualifications of all personnel having responsibility for the care of residents;
- All sanitary conditions within the facility and the surroundings which will ensure the health and comfort of residents;
- License application and license renewal, transfer of ownership, proper management of resident funds and personal property, surety bonds, resident contracts, refund policies, financial ability to operate, and facility and staff records;
- Inspections, complaint investigations, moratoriums, classification of deficiencies, levying and enforcement of penalties, and use of income from fees and fines;
- The enforcement of the resident bill of rights;
- Facilities holding a limited nursing, extended congregate care, or limited mental health license;
- The use of physical or chemical restraints; and
- The establishment of specific policies and procedures on resident elopement.⁴

The DOEA is urged to draft rules that encourage the development of homelike facilities that promote dignity, individuality, strengths, and decision-making of the residents.

Section 429.41(3), F.S., requires that the DOEA submit all proposed rules to the Speaker of the House of Representatives, the President of the Senate, and the appropriate committee for review and comment prior to promulgation.

During the 2010 Regular Session, HB 1565 passed the Legislature, but was vetoed by Governor Crist. During the 2011 Special Session “A,” the veto was overridden and the bill became law.⁵ This law requires state agencies to determine the impact of proposed agency rules and if the rules have an adverse impact on small businesses or is likely to increase regulatory costs in excess of \$200,000 in the aggregate within 1 year after implementation of the rule, the agency must prepare a statement of estimated regulatory costs (SERC).⁶ The SERC must provide whether the rules will financially impact small businesses by \$1 million or more over the first 5 years of enactment. If the economic analysis concludes that the rules meet or exceed this threshold, the rules must be presented to the Speaker of the House of Representatives and the President of the Senate and cannot take effect until ratified by the Legislature.

⁴ Section 429.41(1), F.S.

⁵ Chapter 2010-279, Laws of Fla.

⁶ Section 120.54(3)(b)1., F.S. *See also* s. 120.541, F.S.

The DOEA will be required to follow the rulemaking procedure outlined in HB 1565 irrespective of the fact that s. 429.41, F.S., requires the DOEA to submit proposed rules to the Speaker of the House of Representatives, the President of the Senate, and appropriate committees. However, s. 429.41, F.S., is not redundant or duplicative because HB 1565 requires rules to be submitted to the Legislature if certain conditions exist, while s. 429.41, F.S., requires the DOEA to submit a copy of *all* proposed rules.

III. Effect of Proposed Changes:

This bill amends s. 429.41, F.S., to remove the requirement that the DOEA submit a copy of proposed rules to the Speaker of the House of Representatives, the President of the Senate, and appropriate committees of substance for review and comment prior to promulgation.

The bill also removes the requirement that rules promulgated by the DOEA must encourage the development of homelike facilities which promote the dignity, individuality, personal strengths, and decision-making ability of residents.

The bill provides an effective date of July 1, 2011.

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, Section 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. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DOEA would no longer have to submit all rules to the Legislature for review and comment prior to promulgation and therefore, rules should be implemented more quickly, unless they must still be ratified by the Legislature under s. 120.54(3)(b)1., F.S., and s. 120.541, F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.