

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/HB 965	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Health & Human Services Committee; Appropriations Committee; Harrison	114 Y's	0 N's
COMPANION BILLS:	CS/CS/SB 1164	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/CS/HB 965 passed the House on February 24, 2016, and subsequently passed the Senate on March 7, 2016.

The bill amends laws relating to the uniform firesafety standards for assisted living facilities (ALFs). Current law requires ALFs to comply with the National Fire Protection Association (NFPA), 1994 edition of the Life Safety Code. As such, current firesafety requirements for ALFs are more than 20 years old. The bill requires that the current edition of the NFPA, Life Safety Code, be used in determining the uniform firesafety standards adopted by the State Fire Marshal for ALFs. As a result, ALF residents can be provided a living environment that utilizes modern firesafety advancements in technology, materials, and building design.

The bill removes the requirement that the Office of the State Fire Marshal (OSFM) provide training and education to the employees of the Agency for Health Care Administration and local government inspectors.

The bill prohibits a utility from charging above the actual expense incurred by the utility for the installation and maintenance of automatic fire sprinkler systems in an ALF. Current law only prohibits a local government from charging above the actual expense incurred for the same installation.

The bill creates an exemption that allows an ALF licensed prior to July 1, 2016, to remain under the provisions of the 1994 and 1995 editions of the NFPA, Life Safety Code. To qualify for the exemption, an ALF must affirmatively notify the local authority of the intent to remain under the 1994 and 1995 editions of the Life Safety Code. Additionally, an ALF that undergoes Level III building alterations or rehabilitation, as defined in the Florida Building Code, or that seeks to utilize a feature not authorized under the 1994 or 1995 edition of the Life Safety Code, must comply with all of the new uniform firesafety standards in effect for ALFs as adopted by the State Fire Marshal.

The bill has an insignificant fiscal impact to state government revenues and expenditures.

The bill was approved by the Governor on March 24, 2016, ch. 2016-92, L.O.F., and will become effective on July 1, 2016.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Assisted Living Facilities

An 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.¹ The personal services provided include direct physical assistance or supervision with the activities of daily living and the self-administration of medication.² Activities of daily living include: ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.³

ALFs are licensed and regulated by the Agency for Health Care Administration (AHCA) under part I of ch. 429, F.S., and part II of ch. 408, F.S. ALFs are also regulated by the Department of Elder Affairs (DOEA) under Rule 58A-5, F.A.C.

As of March 8, 2016, there are 3,074 licensed ALFs in Florida with 92,867 beds.⁴

Firesafety

The State Fire Marshal is required to establish uniform fire safety standards to govern the construction and utilization of certain buildings and structures.⁵ Some buildings, such as ALFs, due to their specialized use or the special characteristics of the persons utilizing or occupying the buildings, are subject to firesafety standards reflecting such special needs.⁶ In Florida, all firesafety laws and rules are contained or incorporated by reference into the Florida Fire Prevention Code.⁷

Section 429.41, F.S., governs ALF firesafety and requires the State Fire Marshal to establish and enforce uniform firesafety standards for ALFs. Additionally, rulemaking authority is given to the DOEA, in consultation with the AHCA, the Department of Children and Families, and the Department of Health, to adopt rules, policies and procedures, for ALFs, which must include certain fair minimum standards.⁸

Specifically, the State Fire Marshal is required to use the National Fire Protection Association (NFPA), 1994 edition of the Life Safety Code to establish and enforce ALF uniform firesafety standards. In addition, the OSFM is tasked with the responsibility of providing training and education on the proper application of Chapter 5, NFPA Life Safety Code 101A, 1995 edition, to its employees, the employees of AHCA, and local government inspectors, who are responsible for regulating ALF communities.⁹

Section 429.41, F.S., mirrors the firesafety standards of the 1994 Life Safety Code, with the exception of the State Fire Marshal's training and education requirements. The 1994 code does not contain the safety improvements that have been developed and adopted into the more recent editions of the code over the past 20 years. As a result, ALFs are prohibited from utilizing modern advancements in

¹ An ALF does not include an adult family-care home or a non-transient public lodging establishment. s. 429.02(5), F.S.

² s. 429.02(17), F.S.

³ s. 429.02(1), F.S.

⁴ Agency for Health Care Administration, *Facility/Provider Search Results-Assisted Living Facilities*, available at <http://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx> (report generated on Feb. 13, 2016).

⁵ s. 633.206, F.S.

⁶ *Id.*

⁷ s. 633.202(1), F.S.

⁸ The adopted rules must include requirements for and maintenance of facilities relating to plumbing, heating, cooling, lighting, ventilation, living space, and other housing conditions, which will ensure the health, safety, and comfort of residents and protection from fire hazard. See rule 58A-5, F.A.C., which provides firesafety regulations primarily by cross reference to s. 429.41 and rule 69A-40, F.A.C.

⁹ s. 429.41, F.S.

firesafety which hinders the construction and redevelopment of ALFs and forces builders to work around the outdated safety codes in an effort to build safe structures.¹⁰

Additionally, “a local government” that installs and maintains an automatic fire sprinkler system in an ALF is prohibited from charging in excess of the actual expense incurred in the installation and maintenance of such system, as of January 1, 1996.

The 2015 edition of the NFPA Life Safety Code requires an existing facility that undergoes building rehabilitation to meet certain standards. Rehabilitation work on existing facilities is classified as one of the following work categories:

- Repair;
- Renovation;
- Modification;
- Reconstruction;
- Change of use or occupancy classification; or
- Addition.¹¹

Any facility undergoing repair, renovation, modification, or reconstruction must comply with the requirements of the existing residential board and care occupancies.¹² However, a change in facility size from small to large requires compliance with the new residential board and care occupancies.¹³ A facility that provides sleeping accommodations for more than 16 residents is classified as a large facility.¹⁴ If an addition is made to a facility, the addition must comply with the new residential board and care occupancies, and the existing portion of the facility must comply with the existing residential board and care occupancies.¹⁵

Effect of Changes

The bill repeals fire code requirements that are more than 20 years old. Through this significant repeal of the statutory language, the Department of Financial Services indicates that inconsistencies between the Florida Building Code and the Fire Prevention Code will be removed.¹⁶ The bill updates the firesafety requirements for ALFs by replacing the reference to the 1994 edition of the Life Safety Code with a reference to the current edition of the NFPA, Life Safety Code, NFPA 101 and 101A.

The bill removes the requirement that the OSFM provide training and education to the employees of AHCA and local government inspectors. This training has not been conducted in at least five years¹⁷, and does not presently occur.¹⁸

¹⁰ Email from Susan E. Anderson, Vice President of Public Policy, Florida Assisted Living Federation of America, RE: HB Florida Insurance & Banking Subcommittee -- House Bill 965 Inquiry (Jan. 29, 2016).

¹¹ National Fire Protection Association 101, *Life Safety Code-2015 Edition*, s. 43.2.2.1.1 defines “repair” as the patching, restoration, or painting of materials, elements, equipment, or fixtures for the purpose of maintaining such materials, elements, equipment, or fixtures in good or sound condition; s. 43.2.2.1.2 defines “renovation” as the replacement in kind, strengthening, or upgrading of building elements, materials, equipment, or fixtures, that does not result in a reconfiguration of the building spaces within; s. 43.2.2.1.3 defines “modification” as the reconfiguration of any space; the addition, relocation, or elimination of any door or window; the addition or elimination of load-bearing elements; the reconfiguration or extension of any system; or the installation of any additional equipment; s. 43.2.2.1.4 defines “reconstruction” as the reconfiguration of a space that affects an exit or a corridor shared by more than one occupant space; or the reconfiguration of a space such that the rehabilitation work area is not permitted to be occupied because existing means of egress and fire protection systems, or their equivalent, are not in place or continuously maintained; s. 43.2.2.1.5 defines “change of use” as a change in the purpose or level of activity within a structure that involves a change in application of the requirements of the code; s. 43.2.2.1.6 defines “change of occupancy classification” as the change in the occupancy classification of a structure or portion of a structure; s. 43.2.2.1.7 defines “addition” as an increase in the building area, aggregate floor area, building height, or number of stories of a structure.

¹² National Fire Protection Association 101, *Life Safety Code-2015 Edition*, s. 43.1.2.1

¹³ National Fire Protection Association 101, *Life Safety Code-2015 Edition*, s. 33.1.7

¹⁴ National Fire Protection Association 101, *Life Safety Code-2015 Edition*, s. 33.2.1.1.2

¹⁵ National Fire Protection Association 101, *Life Safety Code-2015 Edition*, s. 43.8.1.1

¹⁶ The Department of Financial Services, Agency Analysis of 2015 House Bill 965, p. 2 (Dec. 22, 2015).

¹⁷ Email correspondence with The Department of Financial Services (Feb. 8, 2016), RE: House Bill 965 Inquiry.

The bill adds “a utility” to the entities prohibited from charging in excess of the actual expense incurred in the installation and maintenance of an automatic fire sprinkler system. The bill removes the date provision limiting application of the above provision to ALF facilities existing as of January 1, 1996.

The bill creates an exemption that allows an ALF licensed prior to July 1, 2016 to remain under the provisions of the 1994 and 1995 editions of the NFPA, Life Safety Code. To qualify for the exemption, an ALF must affirmatively notify the local authority of the intent to remain under the 1994 and 1995 editions of the Life Safety Code. Additionally, an ALF that undergoes Level III building alterations or rehabilitation, as defined in the Florida Building Code, or that seeks to utilize a feature not authorized under the 1994 or 1995 edition of the Life Safety Code, must comply with all of the new uniform firesafety standards in effect for ALFs as adopted by the State Fire Marshal.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Insignificant. See Fiscal Comments.

2. Expenditures:

Insignificant. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. See Fiscal Comments.

2. Expenditures:

Indeterminate. See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The impact to the private sector is indeterminate. Provisions of the bill exempt certain ALF facilities licensed prior to July 1, 2016, from meeting requirements of the new uniform firesafety code. However, if an ALF were to undergo building rehabilitation as described in the new code established by the State Fire Marshal, there could be additional expenditures for the ALF to become compliant with the new uniform firesafety code.

The bill also prohibits a utility from charging a fee in excess of the actual expense of installing and maintaining automatic fire sprinkler systems in a licensed ALF. To that extent, ALFs may realize a reduction in expenditures associated with the installation and maintenance of automatic fire sprinkler systems.

D. FISCAL COMMENTS:

Under current law, the OSFM, within existing budget, is required to provide training and education on the application of the Life Safety Code to AHCA, local government inspectors, and other ALF provider

¹⁸ Email from Susan E. Anderson, Vice President of Public Policy, Florida Assisted Living Federation of America, RE: HB Florida Insurance & Banking Subcommittee -- House Bill 965 Inquiry (Jan. 29, 2016).

associations. The bill removes the training and education requirement of the OSFM. The OSFM currently has no staffing resources specifically identified for the training requirements under current law; therefore, the bill will have minimal impact to workload performed by the OSFM. According to the DFS, the OSFM has not conducted this training in the past five years.¹⁹

In addition, to the extent that AHCA and local government inspectors will no longer have to organize staff time related to training and education on the Life Safety Code provided through the OSFM, there is the potential for a decrease in workload moving forward.

¹⁹ Email correspondence with The Department of Financial Services (Feb. 8, 2016), RE: House Bill 965 Inquiry.