

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 965 Firesafety

SPONSOR(S): Appropriations Subcommittee; Harrison

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1164

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N	Yaffe	Luczynski
2) Appropriations Committee	24 Y, 0 N, As CS	Keith	Leznoff
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The bill amends current law, relating to the uniform firesafety standards for assisted living facilities. The bill repeals fire code requirements that are more than 20 years old and repetitious of those contained in the 1994 Life Safety Code. The bill updates the firesafety requirements for assisted living facilities by replacing the reference to the 1994 edition of the Life Safety Code with a reference to the current edition of the National Fire Protection Association, Life Safety Code, NFPA 101 and 101A. This will allow assisted living facilities to utilize modern advancements in safety, technology, materials, and building design.

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

The bill adds "a utility," in addition to "a local government," 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 has an insignificant fiscal impact to state government revenues and expenditures. In addition, the bill has an indeterminate fiscal impact to local government and the private sector.

The bill has an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Assisted Living Facilities

An assisted living facility (ALF) is any building or buildings, section or distinct part of a building, private home, boarding home, home for the aged, or other residential facility, whether operated for profit or not, which undertakes through its ownership or management to provide housing, meals, and one or more *personal services* for a period exceeding 24 hours to one or more adults.¹ Personal services are direct physical assistance with, or supervision of, the *activities of daily living* and the self-administration of medication.² Activities of daily living are functions and tasks of self-care such as ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.³

An ALF is required to provide care and services appropriate to the needs of the residents accepted for admission to the facility. An ALF must be licensed by the Agency for Health Care Administration (AHCA), pursuant to part I of ch. 429, F.S., and part II of ch. 408, F.S. According to a web search on the AHCA website, there are 3,083 licensed ALFs in Florida.⁴

Firesafety

The Department of Elder Affairs (DOEA), in consultation with the AHCA, the Department of Children and Families, and the Department of Health, is required to promulgate rules and firesafety procedures to ensure the safety of residents living within an ALF community. The State Fire Marshal is required to apply the NFPA Life Safety Code from 1994 to establish and enforce uniform firesafety standards for ALFs, in cooperation with the AHCA, the DOEA, and the Department of Health. In addition, the Office of the State Fire Marshal 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 the AHCA, and local government inspectors, who are responsible for regulating ALF communities.

Section 429.41, F.S., which governs ALF firesafety, 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 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.⁵

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.

Effect of Proposed Changes

The bill repeals fire code requirements that are more than 20 years old and repetitious of those contained in the 1994 Life Safety Code. Through this significant repeal of the statutory language, the DFS indicates that inconsistencies between the Florida Building Code and the Fire Prevention Code will be removed.⁶ The bill updates the firesafety requirements for ALFs by replacing the reference to the

¹ 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 Locator*, <http://www.floridahealthfinder.gov/facilitylocator/FacilitySearch.aspx> (last visited Feb. 3, 2016).

⁵ 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).

⁶ The Department of Financial Services, Agency Analysis of 2015 House Bill 965, p. 2 (Dec. 22, 2015).

1994 edition of the Life Safety Code with a reference to the current edition of the National Fire Protection Association (NFPA), Life Safety Code, NFPA 101 and 101A. Additionally, the bill exempts ALFs licensed prior to July 1, 2016 from meeting requirements of the new code under specific circumstances. Specifically, if an ALF exceeds the firesafety requirements of the NFPA 101 chapter 23, 1994 edition, it would be exempt from any requirement of the new uniform firesafety code established and adopted pursuant to s. 633.206, F.S., unless the ALF undergoes building rehabilitation as described in the new code established by the State Fire Marshal. As s. 633.202, F.S., directs the State Fire Marshal to adopt a new edition of the Florida Fire Prevention Code every third year, ALFs will be able to utilize modern advancements in safety, technology, materials, and building design.

The bill removes the requirements that the Office of the State Fire Marshal provide training and education to the employees of the AHCA and local government inspectors. This training has not been conducted in at least five years⁷, and does not presently occur.⁸

The bill adds “a utility,” in addition to “a local government,” 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.

B. SECTION DIRECTORY:

Section 1: amends s. 429.41, F.S., relating to rules establishing standards for firesafety.

Section 2: provides an effective date.

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 under specific circumstances. Specifically, if an ALF exceeds the firesafety requirements of the NFPA 101 chapter 23, 1994 edition, it would be exempt from any requirement of the new uniform firesafety code established and adopted pursuant to s. 633.206, F.S. 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. Additionally, ALF's would be able to build and add improvements to new and existing structures in

⁷ Email correspondence with The Department of Financial Services (Feb. 8, 2016), RE: House Bill 965 Inquiry.

⁸ 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).

accordance with the updated Life Safety Code in order to utilize modern advancements in safety, technology, materials, and building design.

D. FISCAL COMMENTS:

Under current law, the Office of the State Fire Marshal (OSFM), within existing budget, is required to provide training and education on the application of the Life Safety Code to the AHCA, local government inspectors, and other ALF provider 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.⁹

In addition, to the extent that the 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.

As is currently required of a local government, the bill also requires a utility to not charge a fee in excess of the actual expense of installing and maintaining automatic fire sprinkler systems in existing and properly licensed ALF's. To that extent, there could potentially be a negative, yet indeterminate revenue impact to a utility if they were currently overcharging for those services.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 25-27 state that the Department of Financial Services shall adopt uniform firesafety standards as specified in s. 633.206, F.S. This language appears to be redundant with ss. 633.206(1)(b) and 633.202(2), F.S.

Lines 51-53 state than an evacuation capability evaluation for initial licensure shall be conducted within 6 months after the date of licensure. It is not clear what entity is responsible for conducting this evaluation. Additionally, it is not clear under what standard the evacuation capability evaluation should be conducted.

Lines 140-145 state "a utility" may charge fees not in excess of the actual expense incurred in the installation and maintenance of an automatic fire sprinkler system in an ALF. It is unclear what type of entity "a utility" refers to and who this provision applies to.

Lines 140-145 also state that "a utility," in addition to "a local government," are the entities prohibited from charging in excess of the actual expense incurred in the installation and maintenance of an automatic fire sprinkler system. The provision limiting application of the above provision to ALF facilities

⁹ Email correspondence with The Department of Financial Services (Feb. 8, 2016), RE: House Bill 965 Inquiry.

“existing” as of January 1, 1996, is removed. As a result, it becomes unclear as to what point in time an ALF has to “exist” for this provision to be applicable.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 9, 2016, the Appropriations Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Specifies that uniform firesafety standards for assisted living facilities shall be established by the State Fire Marshal; and
- Provides an exemption for certain assisted living facilities, under specific circumstances, for compliance with the new uniform firesafety standards set forth in the bill.

The bill analysis is drafted to the bill as amended.