

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 965 Firesafety

SPONSOR(S): Health & Human Services Committee; 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	16 Y, 0 N, As CS	Guzzo	Calamas

SUMMARY ANALYSIS

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. The NFPA Life Safety Code is updated every three years. The 2015 edition of the NFPA Life Safety Code is the current edition.

The bill updates the firesafety requirements for ALFs that are more than 20 years old. Specifically, the bill requires the current edition of the NFPA, Life Safety Code to be used in determining the uniform firesafety code adopted by the State Fire Marshal for ALFs instead of the 1994 edition. As a result, ALF residents will be provided a living environment that utilizes modern firesafety advancements in technology, materials, and building design.

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

The bill provides an exemption from the new firesafety code requirements adopted by the State Fire Marshal for an ALF licensed prior to July 1, 2016. However, an ALF that undergoes building rehabilitation, as described by the uniform firesafety code established by the State Fire Marshal, must be in compliance with the new uniform firesafety code.

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

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 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 A personal service is direct physical assistance with, or supervision of, 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 February 13, 2016, there are 3,080 licensed ALFs in Florida with 92,701 beds.⁴

Firesafety

Section 429.41(1), provides rulemaking authority for DOEA, in consultation with 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. Specifically, the 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.⁵

Section 429.41(1)(a), F.S., requires the State Fire Marshal to establish and enforce uniform firesafety standards. 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 uniform firesafety standards for ALFs. 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 AHCA, and local government inspectors, who are responsible for regulating ALF communities.⁶

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.⁷

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

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 February 13, 2016).

⁵ Rule 58A-5, F.A.C., provides firesafety regulations primarily by cross reference to s. 429.41 and rule 69A-40, F.A.C.

⁶ S. 429.41(a), F.S.

⁷ 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).

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.⁸

Any facility undergoing repair, renovation, modification, or reconstruction must comply with the requirements of the existing residential board and care occupancies.⁹ However, a change in facility size from small to large requires compliance with the new residential board and care occupancies.¹⁰ A facility that provides sleeping accommodations for more than 16 residents is classified as a large facility.¹¹

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.¹²

Effect of Proposed 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.¹³

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 provides an exemption from the new firesafety code requirements adopted by the State Fire Marshal which exceed the requirements of the NFPA 101, 1994 edition, for an ALF licensed prior to July 1, 2016. However, an ALF that undergoes building rehabilitation, as described by the uniform firesafety code established by the State Fire Marshal, must be in compliance with the new uniform firesafety code. As a result,

⁸ 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.

⁹ National Fire Protection Association 101, *Life Safety Code-2015 Edition*, s. 43.1.2.1

¹⁰ National Fire Protection Association 101, *Life Safety Code-2015 Edition*, s. 33.1.7

¹¹ National Fire Protection Association 101, *Life Safety Code-2015 Edition*, s. 33.2.1.1.2

¹² National Fire Protection Association 101, *Life Safety Code-2015 Edition*, s. 43.8.1.1

¹³ The Department of Financial Services, Agency Analysis of 2015 House Bill 965, p. 2 (Dec. 22, 2015).

The bill removes the requirements that the Office of the State Fire Marshal provide training and education to the employees of AHCA and local government inspectors. This training has not been conducted in at least five years¹⁴, and does not presently occur.¹⁵

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.

B. SECTION DIRECTORY:

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

Section 2: provides an effective date of July 1, 2016.

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.

¹⁴ Email correspondence with The Department of Financial Services (Feb. 8, 2016), RE: House Bill 965 Inquiry.

¹⁵ 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).

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 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.¹⁶

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.

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:

None.

B. RULE-MAKING AUTHORITY:

The bill provides sufficient rulemaking authority to the State Fire Marshal to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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 first amendment specified that uniform firesafety standards for ALFs shall be established by the State Fire Marshal. The second amendment provided an exemption for certain ALFs, under specific circumstances, for compliance with the new uniform firesafety standards set forth in the bill.

On February 17, 2016, the Health and Human Services Committee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Removed a reference to “existing” ALFs to technically conform to a provision deleting a grandfather provision related to the application of current firesafety rules; and
- Removed an incorrect reference to a chapter of the firesafety requirements of NFPA 101, 1994 edition.

The analysis is drafted to the committee substitute.

¹⁶ Email correspondence with The Department of Financial Services (Feb. 8, 2016), RE: House Bill 965 Inquiry.