

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: February 27, 1998 Revised: 3/3/98 _____

Subject: Residential Swimming Pools

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Cooper</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/2 amendments</u>
2.	<u>_____</u>	<u>_____</u>	<u>HC</u>	<u>_____</u>
3.	<u>_____</u>	<u>_____</u>	<u>WM</u>	<u>_____</u>
4.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
5.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>

I. Summary:

This bill creates the Florida Residential Swimming Pool Barriers Act, which creates a statutory requirement for fences or other barriers around residential swimming pools. The bill provides definitions, specifies exemptions, penalties for noncompliance, and authorizes the Department of Health (DOH) to adopt rules necessary to implement, administer, and enforce the act.

This bill creates the following sections of the Florida Statutes: 515.21, 515.23, 515.25, 515.27, 515.29, and 515.31.

II. Present Situation:

It is estimated that there are 1 million residential pools in Florida.

According to the U.S. Consumer Product Safety Commission, an estimated 260 children under five years of age drown each year in residential swimming pools and spas nationwide. An estimated 2,000 children in that age group are treated with submersion injuries in hospital emergency rooms. The DOH reports that approximately 75 children drown each year in private swimming pools in Florida.

State Minimum Building Codes

Chapter 553, F.S., provides for building construction standards for the state. Section 553.73(2), F.S., requires units of local government and state agencies that have code enforcement authority to adopt one of the State Minimum Building Codes as its building code. However, a local jurisdiction may adopt, under certain conditions, more stringent requirements than are imposed by the State Minimum Building Code. The State Minimum Building Code consists of four model codes:

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- The *Standard Building Code*, 1988 edition, which is published by the Southern Building Code Congress International (SBCCI);
 - The Council of American Building Officials (CABO) *One and Two Family Dwelling Code* (OTFDW), 1986 edition;
 - The *South Florida Building Code*, 1988 edition, which has been adopted by Dade County and Broward County; and
 - The *EPCOT Building Code*, 1982 edition, which was developed and adopted by the Reedy Creek Improvement District, the local government which controls the property surrounding and including Walt Disney World in Orange and Osceola counties.

Dade and Broward counties use amended versions of the *South Florida Building Code*. The *Standard Building Code* has been adopted by the remaining 65 Florida counties and all cities in those counties.

The Standard Swimming Pool Code, 1994 Edition

Section 315.2.1-10 of the *Standard Swimming Pool Code*, 1994 Edition, requires, in part, that all outdoor residential swimming pools be provided with a barrier at least 4 feet tall and be constructed of materials that preclude easy access. In addition, access gates must be equipped to accommodate a locking device. Pedestrian access gates must open outwards and must be self-closing and have a self-latching device. Where a wall of a dwelling serves as part of the barrier, one of the following must apply:

- all doors with direct access to the pool must be equipped with an alarm that sounds when the door and screen are open;
- the pool must have a power safety cover; or
- other means of protection are used that provide the same degree of protection as 1 and 2.

For above-ground pools, when the means of access is a ladder or steps, then the ladder or steps must be capable of being secured, locked or removed to prevent access, or the ladder or steps must be surrounded by a barrier that meets the requirements stated above. Indoor pools must be equipped with an alarmed door, power safety cover, or other means specified above.

The *Standard Swimming Pool Code* is published as a supplement to the *Standard Building Code* and, according to representatives from the Florida Association of Counties and the Florida League of Cities, many counties and cities in Florida have adopted the *Code*, or portions of the *Code*, for their respective jurisdictions. The *Standard Swimming Pool Code* is also published as an appendix in the CABO *One and Two Family Dwelling Code* (OTFDW), 1993 edition, and is incorporated into the 1996 *Uniform Building Code* adopted by the International Conference of Building Code Officials (ICBO), and the Building Officials and Code Administrators International (BOCA) *National Building Code*, 1993 edition. The American National Standards Institute (ANSI) *Model Barrier Code for Residential Swimming Pools, Spas and Hot Tubs* (1996)

contains the same basic safety requirements as the other model codes, with added window safety features.

The *South Florida Building Code*, 1998 Dade County Edition, generally adopts the ANSI model code. The *South Florida Building Code*, Broward County Edition, does not address pool safety issues. However, many cities in Broward County have adopted the *Standard Swimming Pool Code*, or portions of the *Code*, for their respective jurisdictions, and the 1999 Edition will contain the essential requirements specified in this *Code*.

Governor's Building Codes Study Commission (BCSC)

In 1996, the Governor established the Governor's Building Codes Study Commission. The commission was charged to "evaluate the current effectiveness of, and through general consensus among the commission members, recommend any necessary steps to reform the Florida building code system." The commission was charged to "look at the overall inventory of building codes and standards controlling the quality of Florida's build environment, the administration of these codes and standards, and issues relating to code compliance."

In December 1997, the commission issued its findings and recommendations. One of the recommendations of the commission was that the state adopt a single, uniform building code to be used statewide. If this recommendation is approved by the Legislature, Florida will have one standard for residential swimming pool construction.

III. Effect of Proposed Changes:

Section 515.21, F.S., is created to name this legislation as the Florida Residential Swimming Pool Barriers Act.

Section 515.23, F.S., is created to provide Legislative intent, specifying that all new residential swimming pools be designed and built with a sufficiently high fence or barrier and that existing pools meet the barrier requirements when residences are sold, leased, or rented.

Section 515.25, F.S., is created to provide definitions for the act. Some of the definitions included are as follows:

"Barrier" is defined as "a fence, dwelling wall, nondwelling wall, or combination thereof which completely surrounds the swimming pool and obstructs access to the swimming pool.

"Portable spa" is defined as a nonpermanent structure intended for recreational bathing, in which all controls and water-heating and water-circulating equipment are an integral part of the product and which is cord-connected and not permanently electrically wired.

"Residential" means situated on the premises of a detached one-family or two-family dwelling or a one-family townhouse not more than three stories high.

“Swimming pool” is defined as a structure located in a residential area that is intended for recreational bathing and contains water over 24 inches deep, including, but not limited to, in-ground, above-ground, and on-ground swimming pools, hot tubs, and nonportable spas.

“Indoor swimming pool” is defined as a swimming pool that is totally contained within a building and surrounded on all four sides by walls of the building or within the building.

“Outdoor swimming pool” is defined as any swimming pool that is not an indoor swimming pool.

“Public swimming pool” is defined as a swimming pool as defined in s. 514.011(2), F.S., which is operated for the use of the general public. The term does not include a swimming pool located on the grounds of a private home.

Section 514.27, F.S., is created to require all outdoor swimming pools be provided with a barrier that

- is at least 5 feet high;
- does not have any gaps, openings, indentations, protrusions, or structural components that could allow a child to crawl under, squeeze through, or climb over the barrier; and
- is placed sufficiently away from the water’s edge to prevent a child who may have managed to penetrate the barrier from immediately falling into the water.

The structure of an above-ground pool may be used as a barrier or the barrier for such a pool may be placed on top of its structure, provided such barriers meet the requirements previously specified in the act. The ladder or steps of an above-ground pool must be capable of being secured, locked, or removed to prevent access, or must be surrounded by a barrier meeting the requirements previously specified in the act.

The gates providing access to a swimming pool must open outwards away from the pool and be self-closing and equipped with a self-latching device, with the release mechanism located on the pool side of the gate and placed high enough to be out of reach of a child. The wall of a dwelling may serve as part of the barrier if it does not contain any door or window that opens to provide access to the swimming pool. The barrier must not be located in a way that allows any permanent structure, equipment, or similar object to be used for climbing the barrier.

Licensed pool contractors are responsible for giving the buyer of a residential swimming pool a document containing the requirements of this act and information produced by the DOH on drowning prevention and the responsibilities of pool ownership. Residential swimming pools built before the effective date of this act must meet these new barrier requirements when the residence is sold, leased, or rented.

Persons failing to equip a residential swimming pool with a barrier as required by this act commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, F.S., except that a fine will not be imposed if the person, within 45 days after the citation is issued, has equipped the pool with a barrier as required by this act and has attended a drowning prevention education program.

The DOH is required to adopt rules necessary to implement, administer, and enforce the provisions of the act.

Section 515.29, F.S., provides exemptions to the requirements of the act. These exemptions include various water delivery and storage systems, public swimming pools, portable spas with specified safety covers, and “Political subdivisions that adopt residential pool safety ordinances after the effective date of this chapter, provided the ordinance is equal to or more stringent than the provisions of this chapter.”

Section 515.31, F.S., directs the department to develop an education program on drowning prevention.

The act is to take effect October 1 of the year enacted.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The DOH reports that approximately 150,000 homes with pools sell, rent, or lease annually, and that virtually all of these pools will need barrier installation or modification. Additionally,

DOH reports that 23,000 new pools are sold or constructed annually. DOH reports that fence/barrier installation costs range from \$890 to \$3,290. A representative from the Florida Pool & Spa Association (FPSA) estimates installation costs to range from \$1,500 to \$5,000. Using the DOH estimates, it will cost homeowners \$153 to \$569 million annually to comply with this act. Also, using the FPSA estimates, it will annually cost homeowners \$259 to \$865 million annually to comply with this act.

C. Government Sector Impact:

The DOH is responsible for adopting “rules necessary to implement, administer, and enforce the provisions of this section.” DOH interprets this responsibility to include inspecting residential pools for compliance with the act. DOH reports that an estimated average of 1.3 inspections per pool would be required to allow for some follow-up and reinspection. If 150,000 homes with pools sell, rent, or lease annually, and 23,000 new pools are constructed each year, the department will perform a total of 225,000 required pool fence inspections each year. DOH estimates that it will need \$5.1 million in FY 98/99, and \$6.8 million annually thereafter to fund the inspection program. The bill does not provide funding for or authorize a funding source to fund the pool inspections.

The bill also requires the DOH to develop a drowning prevention education program and produce a publication for distribution to the public that explains the responsibilities of pool ownership. The bill provides that the education program will be funded “using state funds appropriated for this purpose and grants.” DOH estimates that it will cost approximately \$50,000 to develop the drowning prevention program and pool ownership brochure.

VI. Technical Deficiencies:

The bill exempts “[P]olitical subdivisions that adopt residential pool safety ordinances after the effective date of this chapter, provided the ordinance is equal to or more stringent than the provisions of this chapter...” from the requirements of the act. The context suggests that this refers to residential swimming pools within such political subdivisions.

VII. Related Issues:

According to a representative from the National Pool and Spa Institute (NPSI), most states chose to address the “swimming pool barrier” issue in their building codes. However, Arizona and California have recently passed laws specifying statutory safety standards for residential swimming pools. The California law is very similar to the ANSI *Model Code*, which is similar to the swimming pool barrier provisions in the *Standard Swimming Pool Code* used by many cities and counties in Florida.

VIII. Amendments:

#1 by Community Affairs:

This amendment decreases the height minimum of the required barrier from 5 feet to 4 feet.

#2 by Community Affairs:

Technical amendment.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
