

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – This bill does not increase the regulatory duties of the municipalities, counties, or special districts because according to s. 633.025, F.S., they are already required to enforce many of the bill's provisions. However, it does allow local governments to collect fines for non-compliance.

Ensure Lower Taxes – This bill requires all owners of private fire hydrants to have on-going maintenance contracts covering their hydrants. This could be considered more of a mandate than a tax upon the private sector.

Promote Personal Responsibility – This bill increases the liability of hydrant owners if they fail to have on-going maintenance contracts covering their hydrants. Owners can be fined for failing to comply with the provisions of this bill.

B. EFFECT OF PROPOSED CHANGES:

Background

In the past, there have been problems with private fire hydrants not being properly tested, inspected, or maintained in accordance with the Florida Fire Protection Code. These problems have resulted in firefighters arriving at a blaze, only to find that the privately owned fire hydrant was non-functioning. This problem can potentially lead to increased property losses and danger to firefighters.

The Division of State Fire Marshal (Division) is administratively located within the Department of Financial Services and the State Fire Marshal is the Chief Financial Officer. The Division of State Fire Marshal is responsible for updating the Florida Fire Prevention Code (FFPC) every third year. The most recent update became effective January 1, 2005. According to a Division official, the FFPC has adopted the national standards for fire hydrant testing, inspecting, and maintenance as developed by the National Fire Protection Association (NFPA). These standards developed by the NFPA to cover fire hydrants are contained in NFPA publications: NFPA 24 and NFPA 25. These standards require annual testing of fire hydrants.

According to section 633.025(1), F.S., the FFPC and the Life Safety Code are the minimum firesafety standards for Florida, and "shall be deemed adopted by each municipality, county, and special district with firesafety responsibilities." According to s. 633.025(2), F.S., "Pursuant to subsection (1), each municipality, county, and special district with firesafety responsibilities *shall enforce* the Florida Fire Prevention Code... as the minimum firesafety code required by this section." (emphasis added). Each municipality, county, or special district (local government entity) may adopt by ordinance more stringent standards which they will then be responsible to enforce.

Therefore, the FFPC already includes minimum standards for testing, inspecting, and maintaining fire hydrants and local governments currently have enforcement responsibility for these standards. The enforcement of the FFPC falls to the local authority having jurisdiction, usually the local fire official or fire chief. According to the Division, in some local government entities, the person responsible for enforcement is a *volunteer firefighter* and in others, this person would be paid. Therefore, it is up to these persons, paid or unpaid, to enforce the FFPC as it currently applies.

Section 633.052, F.S., states that a county or municipality that has created a code enforcement board or a special master system may enforce its firesafety code violation as provided in chapter 162, F.S. If

no board or special master system exists, the county or municipality is authorized to enact ordinances relating to firesafety codes, which shall provide a maximum civil penalty not to exceed \$500.

This bill does not shift the burden for enforcement from the local government entities, nor does it create more stringent standards for testing, inspecting, or maintaining fire hydrants. Instead it affirmatively requires private fire hydrant owners to annually inspect, test, and maintain their fire hydrants in accordance with specified provisions of NFPA 24 and NFPA 25, and to maintain proof, in the form of a continuing contract, that they have complied with the provisions of this bill.

Changes Proposed by the Bill

This bill requires that a privately owned fire hydrant be tested in compliance with the provisions of NFPA 24 (standard for the installation of private fire service mains and their appurtenances), and must also be tested, inspected, and maintained in compliance with the provisions of NFPA 25 (standard for the inspection, testing, and maintenance of water-based fire protection systems), the edition currently adopted by the Division pursuant to its code and standards adoption authority in chapter 633, F.S. These standards specify how often a fire hydrant must be inspected and how it must be tested.

According to the provisions of this bill, upon the request by a fire official, private fire hydrant owners must produce a valid and continuing maintenance contract with either a plumbing contractor licensed under chapter 489, F.S., an underground utility contractor licensed under chapter 489, F.S., or, if the private hydrant is part of a fire suppression system, a fire protection contractor licensed under chapter 633, F.S.

If the owner of a private hydrant is unable to produce a valid maintenance contract upon the request of a local fire official, the local fire department may enter into a contract for the maintenance of the hydrant as long as federal law, state law, or local ordinance does not prohibit the fire department from entering into such contracts.

Any owner of a private fire hydrant who fails to comply with the provisions of the bill commits a noncriminal violation and is subject to a fine not to exceed \$100 for the first offense. A fine not to exceed \$250 is authorized by the bill for subsequent offenses.

C. SECTION DIRECTORY:

Section 1 provides that a person who owns a private fire hydrant must ensure the hydrant is tested in compliance with specified provisions of NFPA 24 and that the hydrant is inspected and maintained in compliance with the provisions of NFPA Standard 25. The Division, pursuant to its code-and-standards-adoption authority in chapter 633, F.S., has adopted these standards within the FFPC.

As required by the bill, upon request of a fire official, a private fire hydrant owner must produce a valid and continuing maintenance contract with either a plumbing contractor licensed under chapter 489, F.S., an underground utility contractor licensed under chapter 489, F.S., or, if the private hydrant is part of a fire suppression system, a fire protection contractor licensed under chapter 633, F.S. If the hydrant owner fails to produce a valid maintenance contract, the local fire department is authorized by the bill to enter into a maintenance contract with the owner of the fire hydrant unless the fire department is prohibited by local ordinance or state or federal law from entering into such a contract. A person who violates this provision is guilty of a non-criminal violation, punishable by a fine not to exceed \$100 for a first offense or \$250 for each subsequent offense.

Section 2 provides that the act will take effect July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

If a private fire hydrant owner is unable to prove to local fire officials that the hydrant is covered by a continuing maintenance contract, the hydrant owner may contract with the local fire department for the maintenance of the hydrant. Presumably, local fire departments could charge for this service, thus providing a potential source of revenue to the local fire control authority.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill affects only fire hydrants that are privately owned. According to a representative of the licensed plumbing contractors, charges for annual inspection of a fire hydrant range from \$35 to \$200. That amount could vary depending upon how many hydrants were being inspected. Maintenance repairs to a hydrant would depend upon what needs to be repaired.

A representative from the licensed fire suppression systems contractors' association said that fire hydrant(s) connected to that system may be already included in the maintenance contract covering the fire suppression system. However, that depends upon the details of the contract. Priced separately, it could be as little as \$25 plus a site visit.

A representative of the licensed underground utility contractors said that these contractors mainly would do new installations and repairs for fire hydrants already found to be functioning improperly. He said that they would be unlikely to do initial testing or inspecting. However the cost to repair or replace a fire hydrant could vary quite significantly, from \$500 minimum to repair and up to \$2500 to replace. These costs include sending a crew to diagnose the problem, finding the proper parts with which to repair the hydrant (if they are if still being manufactured), then returning to fix the hydrant.

The bill specifies that a private fire hydrant owner who fails to comply with the maintenance and inspection provisions of the bill is subject to an initial fine not to exceed \$100 and subsequent fines not to exceed \$250.

D. FISCAL COMMENTS:

Complying with this bill will require expenditures for private fire hydrants that have not been previously inspected or regularly maintained. The owners will incur these costs. It is unknown how much it will cost owners to comply because that depends upon how much maintenance will be needed for these previously un-maintained hydrants. However, after all the repairs have been made to these fire hydrants, the annual maintenance costs could decrease and level off because these hydrants would now be annually inspected and repaired as needed.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Division of State Fire Marshal highlighted a technical flaw with Section 1 of the bill. The bill cites to NFPA Standard 24, subsection 4-3.6 regarding the proper testing for fire hydrants. However, the 2004 edition of the Florida Fire Prevention Code (FFPC) refers to NFPA Standard 24, subsection 7-3.8, instead. The Division offered the following suggestion in their analysis of HB 267 (quoted below) to fix this flaw.

“Option 1: A person who owns a private fire hydrant must ensure that the hydrant is tested in accordance with the National Fire Protection Association Standard 24, Section 7 ~~subsection 4-3.6~~, and that it is inspected, maintained, and in compliance with the National Fire Protection Association Standard 25, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems. The edition currently adopted by the State Fire Marshal pursuant to its code-adoption and standards adoption authority in chapter 633, Florida Statutes.

Note: When a particular edition of a publication is cited in statute, then that edition of the standard controls for enforcement purposes now and in the future. Thus, the 2004 edition of the NFPA Standard 24 will continue to control the type of testing is required for fire hydrants even if that NFPA standard is updated in the future.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES