

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 709 Liquefied Petroleum Gas

SPONSOR(S): Dorworth

TIED BILLS: None **IDEN./SIM. BILLS:** SB 960

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	15 Y, 0 N, As CS	Kaiser	Blalock
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The Department of Agriculture and Consumer Service's (department's) Bureau of Liquefied Petroleum Gas Inspection (bureau) is the primary agency charged with the regulation of liquefied petroleum (LP) gas wherever the product is stored, distributed, transported and utilized in Florida. The bureau also has statutory authority¹ over the licensing, inspection, enforcement, accident investigation and training of LP gas in the state. The department, the Department of Community Affairs' Florida Building Code Commission (FBC) and the Department of Financial Services' Office of the State Fire Marshal (OSFM) each adhere to fire safety codes put forth by the National Fire Prevention Association (NFPA)² regarding the regulation of LP gas.

Recently, the NFPA approved a 2011 version of the NFPA 58 LP gas code, which reduces the setback requirements for propane tanks³ from ten feet to five feet from a building, adjoining property line, other petroleum tank, or any source of ignition. Current department rules mandate a ten foot setback for propane tanks. The department has started the rule-making process to implement the new national standards. However, due to Executive Order 11-01⁴, the FBC cannot commence with the rule-making until the proposed rule is reviewed and approved by the Office of Fiscal Accountability and Regulatory Reform. Likewise, the OSFM has not yet initiated rule-making.

The bill requires the department, the FBC, and the OSFM to enforce the same LP gas container separation distances as adopted in the 2011 version of the NFPA 58 gas code. The bill also provides for the statutory language regarding the 2011 version of the NFPA 58 gas code to be repealed once the department, the FBC, and the OSFM have adopted the 2011 version. The bill also amends the definition of "propane" to reflect the national standards.

The bill does not appear to have a fiscal impact on state or local governments. The footprint of cell phone towers and switching stations may be reduced, depending upon the tanks used to store the LP gas for the backup generators; thus, resulting in a reduced cost for wireless companies.

¹ Chapter 527, F.S.

² NFPA 1, NFPA 54, and NFPA 58

(<http://www.nfpa.org/categoryList.asp?categoryID=124&URL=Codes%20&%20Standards>)

³ The set back only applies to stationary engine containers with a fill valve that has an integral manual shutoff value.

⁴ http://www.flgov.com/wp-content/uploads/2011/01/scott.eo_one_.pdf

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0709a.ANRS

DATE: 3/9/2011

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Department of Agriculture and Consumer Service's (department's) Bureau of Liquefied Petroleum Gas Inspection (bureau) is the primary agency charged with the regulation of liquefied petroleum (LP) gas wherever the product is stored, distributed, transported and utilized in Florida. The bureau also has statutory authority⁵ over the licensing, inspection, enforcement, accident investigation and training of LP gas in the state. The department, the Department of Community Affairs' Florida Building Code Commission (FBC) and the Department of Financial Services' Office of the State Fire Marshal (OSFM) each adhere to fire safety codes put forth by the National Fire Prevention Association (NFPA)⁶ regarding the regulation of LP gas.

Recently, the NFPA approved a 2011 version of the NFPA 58 LP gas code, which reduces the setback requirements for propane tanks⁷ from ten feet to five feet from a building, adjoining property line, other petroleum tank, or any source of ignition. Current department rules mandate a ten foot setback for propane tanks. The department has started the rule-making process to implement the new national standards. However, due to Executive Order 11-01⁸, the FBC cannot commence with the rule-making until the proposed rule is reviewed and approved by the Office of Fiscal Accountability and Regulatory Reform. Likewise, the OSFM has not yet initiated rule-making.

Many cell phone companies in the state use backup electrical generators at their cell tower sites and switching stations. These generators are usually powered by LP gas with tanks in excess of 125 gallons, thus falling under the purview of the 2011 version of the NFPA 58 LP gas code.

Effect of Proposed Changes

The bill requires the department, the FBC, and the OSFM to enforce the same LP gas container separation distances as adopted in the 2011 version of the NFPA 58 gas code. By enacting this legislation, the footprint of cell phone towers and switching stations may be reduced, depending upon the tanks used to store the LP gas for the backup generators. The bill also provides for the statutory language regarding the 2011 version of the NFPA 58 gas code to be repealed once the department, the FBC, and the OSFM have adopted the 2011 version.

The bill also amends the definition of "propane" to reflect the national standards.

B. SECTION DIRECTORY:

Section 1: Amending s. 527.06, F.S.; prohibiting the Department of Agriculture and Consumer Services (department) or other state agency from requiring compliance with minimum separation distances for liquefied petroleum (LP) gas tanks except when compliance with the national standards are required; and providing for repeal upon certain events transpiring.

Section 2: Amending s. 527.21, F.S.; amending the definition of propane to reflect national standards.

Section 3: Providing an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

⁵ Chapter 527, F.S.

⁶ NFPA 1, NFPA 54, and NFPA 58

(<http://www.nfpa.org/categoryList.asp?categoryID=124&URL=Codes%20&%20Standards>)

⁷ The set back only applies to stationary engine containers with a fill valve that has an integral manual shutoff value.

⁸ http://www.flgov.com/wp-content/uploads/2011/01/scott.eo_one_one_.pdf

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The footprint of cell phone towers and switching stations may be reduced, depending upon the tanks used to store the LP gas for the backup generators; thus, resulting in a reduced cost for wireless companies.

D. FISCAL COMMENTS:

None

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 an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenues in the aggregate, or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Agriculture and Consumer Services (department) has expressed concerns regarding the adoption of the National Fire Protection Association (NFPA) safety codes into statute. In so doing, this may inhibit the department and other agencies⁹ ability to adopt future changes to the NFPA safety code. The department states that the inclusion of a “repealer” clause does not completely solve the problem. One of the agencies may adopt a different version of the NFPA 58 , i.e., 2012, without ever adopting the 2011 version, thus preventing the “repealer” from taking effect. The OSFM has also expressed concerns regarding codifying the NFPA safety code in statute as opposed to through rule promulgation, as is usually done.

⁹ Department of Community Affairs' Florida Building Code Commission (FBC) and the Department of Financial Services' Office of the State Fire Marshal (OSFM)

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 8, 2011, the Agriculture and Natural Resources Subcommittee adopted one amendment to HB 709. The amendment provides for the statutory language regarding the 2011 version of the NFPA 58 gas code to be repealed once the Department of Agriculture and Consumer Services, the Florida Building Commission, and the Office of the State Fire Marshal have each adopted the 2011 version.