

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/SB 1122

INTRODUCER: Community Affairs and Senators Simpson and Dean

SUBJECT: Florida Fire Prevention Code

DATE: April 8, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	Fav/CS
2.	McKay	McVaney	GO	Pre-meeting
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 1122 establishes the following provisions related to the Florida Fire Prevention Code (FFPC):

- a local fire authority may decrease fire flow requirements for isolated buildings in rural or small counties if that authority determines that the development of full fire flow requirements is impractical;
- fire officials must enforce fire wall separation ratings for certain mercantile or business occupancies as outlined in the Florida Building Code; and
- certain farming or ranching operations are exempt from the FFPC.

This bill amends section 633.0215 of the Florida Statutes.

II. Present Situation:

Fire Safety and Building Provisions in Florida

The Division of State Fire Marshall, housed within the Department of Financial Services, is responsible for protecting Floridians from fire hazards pursuant to ch. 633, F.S.

Section 633.0215(1), F.S., requires the State Fire Marshal to adopt by rule the latest editions of the National Fire Protection Association (NFPA) codes every three years. These NFPA codes serve as a base code for the Florida Fire Prevention Code (FFPC). Local governments enforce the FFPC as a minimum standard although they may adopt more stringent fire safety standards within their own jurisdictions subject to requirements provided in s. 633.025(4), F.S. The 2010 FFPC was adopted on December 31, 2011.

The FFPC operates in conjunction with the Florida Building Code (Building Code) adopted pursuant to ch. 553, F.S. The Building Code governs the design and construction of buildings and structures in the state and is developed and modified by the Florida Building Commission (Commission).¹ The Commission maintains and updates the Building Code and its component codes for plumbing, electrical, mechanical, energy conservation, accessibility, structural, and fire systems in buildings. The Building Code, like the FFPC, is adopted every three years and utilizes international codes as a foundation for Florida's base code. Enforcement of the Building Code is also similar to the FFPC: local governments bear this responsibility and may adopt more stringent code requirements within their own jurisdictions subject to provisions.²

Conflicts between the FFPC and the Building Code are resolved through coordination and cooperation between the State Fire Marshall and the Commission in favor of requirements offering the greatest degree of life safety.³ If the State Fire Marshal and Commission are unable to agree on a resolution to a conflict, the issue goes to a mediator.

Fire Flow

Fire flow requirements are intended to assure an adequate water supply for fire suppression by establishing minimum water flow rates to control and extinguish fires within certain types of property subject to specific occupancy classifications. The "required fire flow" is the rate of flow needed for firefighting purposes to confine a major fire to the buildings within a block or other contiguous grouping. The determination of this flow depends upon the size, construction, occupancy, and exposure of buildings within and surrounding the block or group of buildings.

Historically, the determination of required fire flow has been made by local fire authorities having jurisdiction. An important resource in making this determination is the Guide for Determination of Required Fire Flow, published by the Insurance Services Office (ISO), a private ratings agency that measures the major elements of a community's fire suppression system, including its fire department, emergency communications, and water supply.⁴ Following inspection and review of a community's firefighting capabilities, ISO issues a numerical grade, called a Public Protection Classification, which is often used by property and casualty insurers as a tool for calculating insurance rates. This means that a community's investment in fire

¹ Pursuant to s. 553.74, F.S., the Commission is a 25-member technical body appointed by the Governor subject to confirmation by the Senate. The Department of Business and Professional Regulation (DBPR) provides the Commission with administrative, technical, and legal support.

² See ss. 553.73(1)-(4) and 553.80, F.S.

³ See ss. 553.72(5) and 553.73(1)(d), F.S.

⁴ Insurance Services Office: Mitigation Online, *Fire Suppression Rating Schedule Overview*, available at <http://www.isomitigation.com/fsrs/Fire-Suppression-Rating-Schedule-Overview.html> (last visited Apr. 2, 2013).

protection infrastructure often has a direct impact in reducing the community's property insurance rates.

The current 2010 edition of the FFPC adopted the 2009 editions of NFPA 1 and 101.⁵ In the previous edition of the FFPC (2007), the fire flow table was in the annex of the NFPA 1 and listed as *recommended*. The 2009 edition of NFPA 1 moved the table to the "base code" (NFPA 1:18.4). The current code specifies *requirements* for fire flow in both residential and commercial buildings.⁶

Fire Rated Walls or Partitions in the FFPC

Both the FFPC⁷ and the Building Code⁸ require that where different parts of a building comprise different categories of occupancy, those buildings must provide passive fire protection systems to slow or prevent a fire from spreading from one part of the building to another. For example, if a restaurant abuts a day care center or a hotel, the codes will require a fire wall between the two occupancies rated to certain wall fire-rating. These fire ratings are often expressed in "hours," expressing how long the wall can resist a fire of a certain temperature.⁹ The rules are intended to protect life safety, slow the spread of fire, and reduce insurance rates by restricting the ability of a commercial tenant to offload his or her fire risk onto adjoining tenant occupancies.

Chapter 6 of the FFPC outlines several occupancy classifications for buildings and structures. A business occupancy is defined as one used for the transaction of business other than mercantile; a mercantile occupancy is one used for the display and sale of merchandise. A separated occupancy is one in which two or more classifications exist separated by a fire-resistance rated assembly. Fire resistance ratings are permitted to be reduced by 1 hour where the building is protected throughout by an approved automatic sprinkler system.¹⁰

FFPC Classification of Agricultural Buildings

Inspection of agricultural buildings and surrounding property are classified using occupancies defined in the FFPC. Generally, these classifications will be business, storage, or industrial depending on the specific operation conducted within the structure or property; however, other occupancy sections may be applicable.

Exemptions in Chapter 633

Chapter 633 provides for the following current exemptions:

- A condominium, cooperative, or multifamily residential building that is less than four stories in height and has an exterior corridor providing a means of egress is exempt from installing a

⁵ Florida Department of Financial Services, *Analysis of SB 1122* (Mar. 14, 2013) available at <http://abar.laspbs.state.fl.us/ABAR/Document.aspx?id=1026&yr=2013> (last visited Mar. 17, 2013).

⁶ Reductions in the fire flow requirements are permissible through the installation of a fire sprinkler system.

⁷ NFPA 101 s. 6.1.14.4.1, as specified in 6.1.14.4.2 and 6.1.14.4.3, and tables 6.1.14.4.1(a) and (b).

⁸ Florida Building Code sections 508.1, 508.2, 508.3 and 508.4.

⁹ Separations are categorized as 3-hour fire resistance-rated, 2-hour fire resistance-rated, or 1-hour fire resistance-rated.

¹⁰ In no case may the rating be reduced to less than 1 hour.

manual fire alarm system as required in s. 9.6 of the most recent edition of the Life Safety Code adopted in the Florida Fire Prevention Code.¹¹

- Provisions of ch. 633, F.S., do not apply to owners of property who are building or improving farm outbuildings.¹² This means that structures such as barns need not be constructed to the fire code nor are they subject to fine by fire marshals or inspectors.

III. Effect of Proposed Changes:

The bill amends s. 633.0215, F.S., to permit a local fire official to decrease fire flow requirements for isolated buildings in rural or small counties if the authority determines that full fire flow requirements are impractical. The bill does not designate standards to be used in determining what is impractical, or maximum amounts by which the fire flow requirements may be reduced.

The statute is additionally amended to require that a fire official enforce certain wall fire-rating occupancy separations as defined in the Florida Building Code. The ratings apply to one- and two-story structures that are less than 10,000 square feet whose occupancy is defined as business or mercantile.

Finally, s. 633.0215, F.S., is amended to exempt specified farming or ranching structures from the Florida Fire Prevention Code. To qualify, structures must employ fewer than 25 full-time equivalent employees and cannot be used by the public for direct sales or as educational outreach facilities. This exemption does not include structures used for residential or assembly operations.

The bill provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take 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 state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹¹ Section 633.0215, F.S.

¹² Section 633.557, F.S. Owners acting as their own contractors when building or improving farm buildings are exempt from the construction contracting provisions in s. 489.103(7)(a), F.S..

D. Other Constitutional Issues:

The separation of powers provision in the Constitution of the State of Florida states:

The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

The separation of powers doctrine encompasses two fundamental prohibitions. The first is that no branch may encroach upon the powers of another. The second is that no branch may delegate to another branch its constitutionally assigned power. *Chiles v. Children A, B, C, D, E, & F*, 589 So.2d 260, 264 (Fla.1991). Under the nondelegation doctrine the legislature may not delegate the power to enact a law or the right to exercise unrestricted discretion in applying the law. *Sims v. State*, 754 So.2d 657, 668 (2000). Further, the nondelegation doctrine precludes the legislature from delegating its powers absent ascertainable minimal standards and guidelines. *Dep't of Bus. Reg., Div. of Alcoholic Beverages & Tobacco v. Jones*, 474 So.2d 359, 361 (Fla. 1st DCA 1985).

This bill gives local fire officials the discretion to “decrease” fire flow requirements for certain types of buildings if the official determines that the development of full fire flow requirements is “impractical.” The bill provides no standards or guidelines as to what kinds of issues might give rise to impractical fire flow requirements, nor any maximum amount of decrease over which the official has discretion. Absent legislative direction on the standards and guidelines to be utilized in making these two determinations, the bill gives local fire officials unmitigated discretion to decrease legal requirements, which may potentially violate the nondelegation portion of the separation of powers doctrine.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

According to Department of Financial Services (DFS), the proposed changes could result in an increase in insurance rates for the private sector and may also result in the requirement for additional fire protection systems such as automatic fire sprinkler and fire alarm systems.¹³

C. Government Sector Impact:

DFS predicts an indeterminate fiscal impact to local governments based upon individual community density and the staffing and equipment needs of fire departments.¹⁴

¹³ Florida Department of Financial Services, *Analysis of SB 1122* (Mar. 14, 2013).

¹⁴ *Id.*

VI. Technical Deficiencies:

None.

VII. Related Issues:***Occupancy Separation***

While the FFPC and the Building Code contain similar occupancy classification and separation language, the DFS advises in a bill analysis¹⁵ that the codes differ on the separation requirements between a business and mercantile occupancy. The FFPC requires a two-hour fire rated wall or partition between these use groups. This is more restrictive than the Florida Building Code. Generally, the two codes agree on the other occupancy separation requirements.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on April 2, 2013:

- Revises specifications related to the decrease of fire flow requirements.
- Changes wall fire-rating enforcement provisions for certain structure occupancy separations.
- Modifies conditions that trigger an exemption from the Florida Fire Prevention Code for farming or ranching structures.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁵ *Id.*