

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 971 Florida Fire Prevention Code

SPONSOR(S): Regulatory Affairs Committee; Local & Federal Affairs Committee; Insurance & Banking Subcommittee; Raburn and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1122

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Vanlandingham	Cooper
2) Local & Federal Affairs Committee	14 Y, 0 N, As CS	Lukis	Rojas
3) Regulatory Affairs Committee	16 Y, 0 N, As CS	Vanlandingham	Hamon

SUMMARY ANALYSIS

The Florida Fire Prevention Code (FFPC) is a complex set of fire code provisions enforced by the local fire official within each county, municipality, and special fire district in the state. The bill makes two changes to the statutes governing the application of the FFPC.

First, the bill addresses an apparent discrepancy between the FFPC and the Florida Building Code that currently requires upgrades of multiuse commercial buildings whenever a mercantile use (for the display and sale of merchandise) adjoins a business use (for the transaction of business other than mercantile). The FFPC requires a two-hour fire rated wall or partition between these two use groups, while the building code does not. The bill provides that for structures of less than three stories and 10,000 square feet, a fire official shall enforce the less stringent wall fire-rating provisions found in the building code. This may result in cost savings for commercial property owners no longer required to renovate, and it may help such owners to more easily find new tenants to occupy storefronts that may now be vacant. Whether this change may lead to higher insurance rates for owners or tenants of such properties has not been determined.

Second, the bill exempts certain structures on agricultural lands from the FFPC. Existing law already exempts "farm outbuildings" from the FFPC. The bill provides an additional exemption for structures in which the occupancy is limited to no more than 35 persons, which are part of a "farming or ranching operation," and which are situated on property classified as agricultural for property tax purposes. The bill provides that such structures may not be used by the public for direct sales or as an educational outreach facility. Moreover, under no circumstances may the structures be used for either residential or assembly occupancies. This change could result in cost savings for farmer or ranchers who own buildings that would no longer be required to comply with the FFPC.

It does not appear that the bill has any fiscal impact on state government.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The bill and its changes to the Florida Fire Prevention Code

The Florida Fire Prevention Code (FFPC) is adopted by the Division of the State Fire Marshal (SFM), housed within the Department of Financial Services (DFS), at three year intervals as required by s. 633.0215, F.S.¹ This complex set of fire code provisions is enforced by the local fire official within each county, municipality, and special fire district in the state. The county, municipality or special district having jurisdiction within a specific community may also adopt local amendments that are applicable only within that community.

The bill amends s. 633.0215, F.S., in two principal ways:

1) Wall fire-rating requirements

Both the Florida Fire Prevention Code² and the Florida Building Code³ require that where different parts of a building comprise different categories of occupancy, those buildings must install 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 a 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. 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.

The FFPC and the Florida Building Code generally agree on occupancy separation requirements. However, one apparent discrepancy between the codes has perplexed managers of multiuse commercial buildings and apparently has constrained their ability to attract new tenants without engaging in costly building renovations. The two codes differ on the separation between a mercantile occupancy (defined as use for the display and sale of merchandise) and a business occupancy (defined as use for the transaction of business other than mercantile). The FFPC requires a two-hour fire rated wall or partition between these two use groups, while the Florida Building Code does not require separation between business and mercantile uses.

This discrepancy can have consequences for building managers seeking to lease commercial space in multiuse buildings. If a single storefront with two commercial tenancies leases its space to two shops, then no fire-wall separation is required because the occupancies are both classified as mercantile. However, if one of the shops went out of business and the building leased the space to a barber shop or law office, then a mercantile occupancy would abut a business occupancy, and the FFPC would require that the wall between the two spaces be renovated to provide 2-hour rated fire wall protection. Because a fire marshal or inspector could cite the building owner for failing to comply with the code, the FFPC as it currently exists arguably makes it more difficult for building owners to find new tenants for vacant storefronts.

Effect of the bill on wall fire-rating requirements

The bill provides that for one-story or two-story structures that are less than 10,000 square feet, whose occupancy is business or mercantile, a fire official shall enforce the less stringent wall fire-rating provisions for occupancy separation as defined in the Florida Building Code. This will remove the apparent discrepancy between the two codes and address the specific problem of vacant storefronts,

¹ The FFPC is available online at: <http://www.myfloridacfo.com/Division/SFM/BFP/FloridaFirePreventionCode.htm>.

² 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).

³ Florida Building Code sections 508.1, 508.2, 508.3 and 508.4.

which may reduce instances where costly renovations are required and make it easier for owners of vacant commercial buildings to find new tenants.

Whether this change may lead to increased fire risks or higher insurance rates for owners or tenants of such properties has not been determined.

2) Farming and ranching structures

Section 633.557(1), F.S., already provides that “owners of property who are building or improving farm outbuildings” are exempt from the FFPC. 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. However, it is possible that certain farming and ranching structures that are not deemed to be “outbuildings” are still subject to fire protection standards.

Effect of the bill on farming and ranching structures

The bill provides a new exemption from the FFPC for structures in which the occupancy is limited to no more than 35 persons, which are part of a “farming or ranching operation,” and which are situated on property classified as agricultural for property tax purposes. The bill provides that such structures may not be used by the public for direct sales or as an educational outreach facility. Moreover, under no circumstances may the structures be used for either residential or assembly occupancies.⁴

This change could result in cost savings for farmers or ranchers who own buildings that would no longer be required to comply with the FFPC.

Regarding the portion of the bill restricting the FFPC exemption to structures on land classified as agricultural for property tax purposes, current law limits such classification to lands “used primarily for bona fide agricultural purposes.”⁵ The term “agricultural purposes” includes, but is not limited to, horticulture, floriculture, forestry, dairy, livestock, poultry, bee, sod farming, and all forms of farm products and farm production.⁶ Courts have interpreted this statute broadly, applying it to such uses as the boarding and training of horses.⁷ However, agricultural purposes do not include “the wholesaling, retailing, or processing of farm products, such as by a canning factory.”⁸ Nevertheless, because agricultural land classifications are determined by locally elected property appraisers on a case-by-case basis, it is possible that linking the FFPC exemption to land classified as agricultural for property tax purposes could cause the exemption to be applied unevenly among different counties across the state.

Similarly, because it is not clear what type of buildings would be construed as part of a “farming or ranching operation,” nor how much broader this exemption would be than the current exemption for “farm outbuildings,” the bill’s impact on insurance rates and associated fire risks cannot be assessed. Further, once such structures have been approved for occupancy of 35 persons or fewer, it is unclear whether local fire officials would later conduct inspections to ensure such occupancy limits are enforced.

B. SECTION DIRECTORY:

Section 1: Amends s. 633.0215, F.S., to relax fire prevention standards with regard to fire separation in multiuse buildings and farming or ranching structures.

⁴ Assembly occupancy includes any gathering of 50 people or more.

⁵ Section 193.461(3)(b), F.S.

⁶ Section 193.461(5), F.S.

⁷ Markham v. PPI, Inc., 834 So. 2d 922 (Fla. 4th DCA 2003).

⁸ Rule 12D-5.001, Fla. Admin. Code.

Section 2: Establishes an effective date of July 1, 2013.

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:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may result in cost savings for commercial property owners no longer required to upgrade fire walls between separate occupancies within the same building. This change may also allow such property owners to more easily find new tenants to occupy storefronts that are currently vacant.

The bill may also result in cost savings for owners of farming or ranching structures that are no longer required to comply with the fire code.

It is unknown whether the bill may result in increased insurance rates for commercial building owners and tenants in multiuse buildings and for farmers and ranchers whose properties may become exempt from the FFPC.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The 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:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 28, 2013, the Insurance & Banking Subcommittee adopted a proposed committee substitute.

On April 4, 2013, the Local & Federal Affairs Committee adopted one amendment to the bill. The amendment removes the provision of the bill relating to fire flow requirements.

This analysis has been updated to reflect the bill as amended.

On April 16, 2013, the Regulatory Affairs Committee adopted one amendment to the bill. The amendment removed language that had limited the proposed exemption from the Florida Fire Prevention Code to "farming or ranching structures" that are part of an operation that employs fewer than 25 full-time-equivalent workers. Instead, the amendment expanded the proposed exemption to structures on property classified as agricultural for property tax purposes, which is part of a "farming or ranching operation," so long as the structure is not used by the public for direct sales, as an educational outreach facility, or is used for residential or assembly occupancies. The amendment further limits the exemption to structures "in which the occupancy is limited to no more than 35 persons."