

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 Appropriations

BILL: CS/CS/SB 822

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Banking and Insurance Committee; and Senator Stargel

SUBJECT: Firesafety

DATE: February 4, 2016

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|----------------|------------|--------------------------|
| 1. | <u>Matiyow</u> | <u>Knudson</u> | <u>BI</u> | <u>Fav/CS</u> |
| 2. | <u>Betta</u> | <u>DeLoach</u> | <u>AGG</u> | <u>Recommend: Fav/CS</u> |
| 3. | <u>Betta</u> | <u>Kynoch</u> | <u>AP</u> | <u>Fav/CS</u> |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 822 makes the following changes related to regulations included in the Fire Prevention Code on agricultural property:

- Defines “Agricultural pole barn” and exempts such barns from the Florida Fire Prevention Code, including the national codes and the Life Safety Code incorporated by reference.
- Defines a “nonresidential farm building” and specifies certain uses allowing such buildings to be exempt from the Florida Fire Prevention Code, including the national codes and the Life Safety Code incorporated by reference.
- Clarifies that a tent up to 900 square feet is exempt from the Florida Fire Prevention Code, including the national codes incorporated by reference.
- Authorizes a local fire official to consider the fire safety evaluation systems when trying to identify low-cost, reasonable alternatives.

There is no fiscal impact to the state.

II. Present Situation:

State Fire Prevention – State Fire Marshal

Florida’s fire prevention and control law, ch. 633, F.S., designates the state’s Chief Financial Officer (CFO) as the State Fire Marshal. The State Fire Marshal, through the Division of State

Fire Marshal within the Department of Financial Services (DFS), is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety and has the responsibility to minimize the loss of life and property in this state due to fire.¹ Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel and firesafety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; and operates the Florida State Fire College.

In addition to these duties, the State Fire Marshal adopts by rule the Florida Fire Prevention Code (FFPC), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such fire safety laws and rules, at ch. 69A-60, F.A.C. The State Fire Marshal adopts a new edition of the FFPC every three years.² The FFPC includes national firesafety and life safety standards set forth by the National Fire Protection Association (NFPA)³, including the NFPA's Fire Code (1), Life Safety Code (101) and Guide on Alternative Approaches to Life Safety (101A).

The FFPC and national codes provide that events held in any location, whether agricultural or not, that are considered assembly, mercantile, or business in nature, require the building where such an event is held to be classified according to the proper occupancy type. When this occurs, the property owner must bring the building up to the new fire prevention code standards for that occupancy type. This may require the installation of several fire protection features such as fire sprinklers, fire alarm systems, or egress capacity.⁴

Fire Safety Enforcement by Local Governments

State law requires all municipalities, counties, and special districts with firesafety responsibilities to enforce the FFPC as the minimum fire prevention code to operate uniformly among local governments and in conjunction with the Florida Building Code.⁵ These local enforcing authorities may adopt more stringent fire safety standards, subject to certain requirements in

¹ s. 633.104, F.S.

² s. 633.202, F.S.

³ Founded in 1895, the NFPA is a global, nonprofit organization devoted to eliminating death, injury, property and economic loss due to fire, electrical and related hazards. It has developed over 300 voluntary consensus codes and standards in the areas of fire, electrical, and building safety which are widely used by state and local officials. NATIONAL FIRE PROTECTION ASSOCIATION, *About NFPA*, at <http://www.nfpa.org/about-nfpa> (last viewed Dec. 29, 2015). The NFPA states that the Guide on Alternative Approaches to Life Safety "is intended to be used in conjunction with the Life Safety Code (101), not as a substitute." NATIONAL FIRE PROTECTION ASSOCIATION, *NFPA 101A: Guide on Alternative Approaches to Life Safety*, at <http://www.nfpa.org/codes-and-standards/document-information-pages?mode=code&code=101a> (last viewed Dec. 29, 2015).

⁴ Florida Department of Financial Services, Agency Analysis of 2016 Senate Bill 822 (Nov. 18, 2015). The FFPC and national codes define *assembly occupancy* as an occupancy used for a gathering of 50 or more persons for deliberation, worship, entertainment, eating, drinking, amusement, awaiting transportation, or similar uses; or (2) used as a special amusement building, regardless of occupant load (e.g., dance halls, museums, skating rinks). *Mercantile occupancy* means an occupancy used for the display and sale of merchandise (e.g., drugstores and supermarkets). *Business occupancy* means an occupancy used for the transaction of business other than mercantile (e.g., city and town halls, doctors' offices).

⁵ ss. 633.108 and 633.208, F.S.

s. 633.208, F.S.,⁶ but may not enact fire safety ordinances which conflict with ch. 633, F.S., or any other state law.⁷

The chiefs of local government fire service providers (or their designees) are authorized to enforce ch. 633, F.S., and rules within their respective jurisdictions as agents of those jurisdictions, not agents of the State Fire Marshal.⁸ Each county, municipality, and special district with firesafety enforcement responsibilities is also required to employ or contract with a fire safety inspector (certified by the State Fire Marshal) to conduct all fire safety inspections required by law.⁹

The Legislature has recognized that it is not always practical to apply any or all of the provisions of the FFPC and physical limitations may require disproportionate effort or expense with little increase in fire or life safety. Under the minimum fire safety standards, the local fire officials shall apply the applicable fire safety code for existing buildings to the extent practical to ensure a reasonable degree of life safety and safety of property. The local fire officials are also required to fashion reasonable alternatives that afford an equivalent degree of life safety and safety of property.¹⁰

Current Exemptions from the FFPC

Currently, s. 633.202(16), F.S., exempts two types of structures from the FFPC and national codes incorporated by reference:

- A structure located on property that is classified as agricultural for ad valorem purposes and which is part of a farming or ranching operation, if the occupancy is limited by the property owner to no more than 35 persons and is not used by the public for direct sales or as an educational outreach facility. Structures used for residential or assembly purposes (as defined in the FFPC) are not included in this exemption.¹¹
- Tents up to 30 feet by 30 feet.

“Nonresidential farm buildings” are currently not exempt from the FFPC, but are exempt from the Florida Building Code and any county or municipal code or fee, except for code provisions implementing local, state, or federal floodplain management regulations.¹² These structures are defined under s. 604.50, F.S., as any temporary or permanent building or support structure that is classified as a nonresidential farm building on a farm for the purposes of the Florida Building

⁶ s. 633.208, F.S.; *see also* s. 633.102(21), F.S., for the definition of “minimum firesafety standard” and Rule 69A-60.002, F.A.C.

⁷ s. 633.214(4), F.S. A list of local amendments to the FFPC is available at DIVISION OF STATE FIRE MARSHAL, *Local Amendments*: <http://www.myfloridacfo.com/division/sfm/BFP/LocalAmendments.htm> (last viewed Dec. 29, 2015).

⁸ s. 633.118, F.S.

⁹ s. 633.216(1), F.S.

¹⁰ s. 633.208, F.S.

¹¹ Chapter 6 of the FFPC defines “residential occupancy” as “an occupancy that provides sleeping accommodations for purposes other than health care or detention and correctional,” and defines “assembly occupancy” as “an occupancy (1) used for a gathering of 50 or more persons for deliberation, worship, entertainment, eating, drinking, amusement, awaiting transportation, or similar uses; or (2) used as a special amusement building, regardless of occupant load.” *See NFPA, Classification of Occupancy and Hazard of Contents*, <http://codesonline.nfpa.org/a/c.ref/ID020101110939/chapter> (last viewed Dec. 29, 2015).

¹² s. 604.50(1), F.S.

Code, or that is classified as agricultural land for assessment purposes, is used primarily for agricultural purposes, is located on land that is an integral part of a farm operation and is not intended to be used as a residential dwelling. The term may include, but is not limited to, a barn, greenhouse, shade house, farm office, storage building, or poultry house.

Agritourism Activity

Currently, s. 570.86(1), F.S., defines an “agritourism activity” as “any agricultural related activity consistent with a bona fide farm or ranch or in a working forest which allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy activities, including farming, ranching, historical, cultural, or harvest-your-own activities and attractions. An agritourism activity does not include the construction of new or additional structures or facilities intended primarily to house, shelter, transport, or otherwise accommodate members of the general public. An activity is an agritourism activity regardless of whether the participant paid to participate in the activity.”

III. Effect of Proposed Changes:

The bill defines an “Agricultural pole barn” as a nonresidential farm building in which 70 percent or more of the perimeter walls are permanently open and allow free ingress and egress. Furthermore, the bill exempts such pole barns from the Florida Fire Prevention Code, National Codes and the Life Safety Code.

The bill defines a nonresidential farm building for purposes of the Florida Fire Prevention Code as having the same meaning as provided in s. 604.50, F.S. The bill establishes classes for use in which such buildings can be exempt from the Florida Fire Prevention Code, National Codes and the Life Safety Code:

- Class 1: A nonresidential farm building that is used by the owner 12 times per year or fewer for agritourism activity with up to 100 persons occupying the structure at one time. This class is not subject to inspection or the Florida Fire Prevention Code.
- Class 2: A nonresidential farm building that is used by the owner for agritourism activity with up to 300 persons occupying the structure at one time. A structure in this class is subject to annual inspection for classification by the local authority having jurisdiction. This class is not subject to the Florida Fire Prevention Code.
- Class 3: A new or an additional structure or facility constructed, or an existing structure, which is used primarily for housing, sheltering, or otherwise accommodating members of the general public. A structure or facility in this class is subject to annual inspection for classification by the local authority having jurisdiction. This class is subject to the Florida Fire Prevention Code.

The bill requires the State Fire Marshal to adopt rules to administer this section, including;

- The use of alternative lifesafety and fire prevention standards for Classes 1 and 2 structures;
- Notification and inspection requirements for structures in Class 1 and Class 2;
- The application of the Florida Fire Prevention Code for structures in Class 3; and
- Any other standards or rules deemed necessary in order to facilitate the use of structures for agritourism activities.

Finally, the bill allows for a local fire official to consider the fire safety evaluation systems found in NFPA 101A: Guide on Alternative Approaches to Life Safety, adopted by the State Fire Marshal, as acceptable systems for the identification of low-cost, reasonable alternatives to firesafety.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under CS/CS/SB 822, farm owners will be allowed to lease to the public non-residential agricultural buildings for certain events under certain circumstances without having to make costly retrofitting improvements to meet the requirements of the Florida Fire Prevention Code, National Codes, and the Life Safety Code.

C. Government Sector Impact:

The bill has no fiscal impact. The Department of Financial Services will use existing resources to adopt rules to administer these changes including the use of alternative standards, the inspection requirements for Class 1 and Class 2 and the application process for Class 3.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 633.202 and 633.208.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on February 3, 2016:

The CS makes technical drafting changes to the bill and narrows the application of the bill by removing all references to structures or facilities utilized for assembly, business or mercantile purposes and replacing them with references to structures or facilities utilized for agritourism activities.

CS by Banking and Insurance on January 11, 2016:

The CS provides technical changes related to drafting.

- B. **Amendments:**

None.