

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 529 Florida Fire Prevention Code
SPONSOR(S): Commerce Committee, Diaz, Jr.
TIED BILLS: **IDEN./SIM. BILLS:** SB 746

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee	14 Y, 0 N	Brackett	Anstead
2) Commerce Committee	24 Y, 0 N, As CS	Brackett	Hamon

SUMMARY ANALYSIS

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer as the State Fire Marshal, and requires the State Fire Marshal to adopt the Florida Fire Prevention Code (Fire Code) by rule every three years. The Fire Code sets forth fire safety standards (including certain national codes) for property, and is enforced by local fire officials within each county, municipality, and special fire districts in the state. The State Fire Marshal may modify the national fire safety and life safety standards as needed to accommodate the specific needs of the state.

The Fire Code provides that a person may not place combustible waste and refuse in a building's means of egress, which includes a building's exit corridors.

Currently, there are various providers offering doorstep waste collection services to apartment complexes throughout the state. Residents in these complexes place waste outside their front door, and the provider picks it up. An apartment complex resident's front door usually opens to a hallway, corridor, or walkway, which may be the building's exit access and therefore is a part of the building's means of egress.

The bill provides that residents in apartment buildings may place combustible waste and refuse in an exit access corridor if the following conditions are met:

- Doorstep refuse and recycling collection containers do not exceed 13 gallons for apartment buildings with enclosed corridors and interior or exterior stairs;
- Doorstep refuse and recycling collection containers do not exceed 27 gallons for apartment buildings with open air corridors and exterior stairs or balconies with exterior exit stairs;
- Waste, which is in a doorstep refuse and recycling collection container, is not in an exit access corridor for a single period greater than 5 hours;
- Doorstep refuse and recycling collection containers are not in an exit access corridor for a single period greater than 12 hours for apartment buildings with enclosed corridors and interior or exterior stairs;
- Doorstep refuse and recycling collection containers do not reduce the exit access corridor's width below the width required by the Fire Code;
- Doorstep refuse and recycling collection containers are able to stand upright on their own and may not leak fluids when standing upright; and
- The apartment's management staff have written policies and procedures to ensure compliance with the above conditions.

The bill also provides that local fire officials may approve alternative containers or storage arrangements that are equivalent in safety to the bill's requirements.

The exceptions provided for in the bill will expire on July 1, 2021.

The bill is not expected to have a significant fiscal impact on state or local government.

The bill provides for an effective date of July 1, 2018.

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

STORAGE NAME: h0529c.COM

DATE: 1/22/2018

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current 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 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 fire safety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts fire safety inspections of state property; and operates the Florida State Fire College.

Adoption and Interpretation of the Florida Fire Prevention Code

The State Fire Marshal also adopts by rule the Florida Fire Prevention Code (Fire Code), 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 Fire Code every three years.² When adopting the Fire Code the Fire Marshal is required to adopt the most current version of the national fire and life safety standards set forth by the National Fire Protection Association (NFPA) including the:

- NFPA's Fire Code (1);
- Life Safety Code (101); and
- Guide on Alternative Approaches to Life Safety (101A).³

The State Fire Marshal may modify the national fire safety and life safety standards as needed to accommodate the specific needs of the state.⁴

The most recent Fire Code is the 6th edition, which is referred to as the 2017 Florida Fire Prevention Code. The 6th edition of the Fire Code took effect on January 1, 2018.

The State Marshal has authority to interpret the Code, and is the only authority that may issue a declaratory statement relating to the Fire Code.⁵

Fire Safety Enforcement by Local Governments

State law requires all municipalities, counties, and special districts with fire safety responsibilities to enforce the Fire Code as the minimum fire prevention code to operate uniformly among local governments and in conjunction with the Florida Building Code.⁶ These local enforcing authorities may adopt more stringent fire

¹ s. 633.104, F.S.

² s. 633.202, F.S.

³ s. 633.202(2), F.S. Founded in 1896, the National Fire Protection Association delivers information and knowledge through more than 300 consensus codes and standards, research, training, education, outreach and advocacy; and by partnering with others who share an interest in furthering the mission. NFPA, *About NFPA*, <http://www.nfpa.org/about-nfpa> (last visited on Dec. 7, 2017).

⁴ *Id.*

⁵ s. 633.104(6), F.S.

⁶ ss. 633.108 and 633.208, F.S.

safety standards, subject to certain requirements in s. 633.208, F.S., but may not enact fire safety ordinances that 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 fire safety 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

Section 633.208(5), F.S. states “With regard to existing buildings, the Legislature recognizes that it is not always practical to apply any or all of the provisions of the Fire Code and that physical limitations may require disproportionate effort or expense with little increase in fire or life safety.” Pursuant to s. 633.208(5), F.S., local fire officials shall apply the Fire 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.

Florida Building Code

The Florida Building Code (Building Code) is the statewide building code for all construction in the state. The Florida Building Commission (Commission), housed within the Department of Business and Professional Regulation (DBPR), implements the Building Code. The Commission reviews the International Code Council’s I-Codes and the National Electric Code every three years to determine if it needs to update the Building Code.¹⁰

Means of Egress

A means of egress is a path available for a person to leave a building. A means of egress is made up of three parts, which includes the following:

- Exit access;
- Exit; and
- Exit discharge.¹¹

The exit access is a path, such as a hallway or corridor, from any location in the building to an exit. The exit is usually a door leading outside, or in a multi-story building, an enclosed stairway. The exit discharge is a path from the exit to a space that is dedicated to public use such as a street or alley.¹²

The Fire Code provides that a building’s means of egress must be a certain width determined by the number of occupants in the building and the use of the building.¹³ The Fire Code further provides that a building’s means of egress must be free of all obstructions or impediments in case of fire or other emergency.¹⁴

The Building Code also provides that a building’s means of egress must be a certain width determined by the number of occupants in the building.¹⁵ The Building Code provides that the *required width* of a building’s means of egress must be free of all obstructions and impediments.¹⁶

⁷ ss. 633.208 and 633.214(4), F.S.

⁸ s. 633.118, F.S.

⁹ s. 633.216(1), F.S.

¹⁰ s. 553.73(7)(a), F.S.

¹¹ Section 3.3.176 of the 6th edition of the Florida Fire Prevention Code (NFPA 1, Fire Code).

¹² International Code Council, *Accessible Means of Egress*, <https://www.iccsafe.org/safety/Documents/MeansofEgressBroch.pdf> (last visited Dec. 7, 2017).

¹³ See Section 7.3.4 of the 6th edition of the Florida Fire Prevention Code (NFPA 101, Life Safety Code).

¹⁴ Section 7.1.10.1 of the 6th edition of the Florida Fire Prevention Code (NFPA 101, Life Safety Code).

¹⁵ Section 1005 of the 6th edition of the Florida Building Code (Building).

¹⁶ Section 1018.1, 1020.3, and 1024.2 of the 6th edition of the Florida Building Code (Building).

However, the Building Code provides that maintenance of a building's means of egress must be in accordance with the Fire Code.¹⁷ DBPR has interpreted this to mean that the Fire Code takes precedence when it comes to people placing objects, such as a trashcan, in a building's means of egress.¹⁸

Combustible Waste and Refuse

The Fire Code defines combustible waste as any "combustible or loose waste material that is generated by an establishment or process and, if salvageable, is retained for scrap or reprocessing on the premises where generated or transported to a plant for processing."¹⁹

The Fire Code defines combustible refuse as "a combustible or loose rubbish, litter, or waste materials generated by an occupancy that are refused, rejected, or considered worthless and are disposed of by incineration on the premises where generated or periodically transported from the premises."²⁰

Combustible waste and refuse may be stored in an apartment building if the combustible waste and refuse is:

- Stored in a container less than 1.5 cubic yards (302 gallons);
- Stored in an enclosed area with a 1 hour fire resistance rating and an automatic sprinkler system;
- Removed from the building once a day unless the waste and refuse is stored in a noncombustible room; and
- Not stored in the building's exit(s).²¹

Private Doorstep Collection Providers

Currently, there are various providers offering doorstep waste collection services to apartment complexes throughout the state. The basic business model requires the residents of an apartment building to place their waste outside of their doorstep, in a specified container approved by the provider. The waste collection companies then come by and collect the waste at a specified time.²²

An apartment complex resident's front door opens to a hallway, corridor, or walkway, which is usually the building's exit access and therefore part of the building's means of egress. According to DFS, apartments that contract with the doorstep waste collection providers are violating the Fire Code by allowing residents to place combustible waste and refuse in their buildings' means of egress.²³

In recent declaratory statements, the State Fire Marshal determined that apartments may not allow residents to place waste containers outside their front doors regardless of the size of the container or if the waste is removed daily. The State Fire Marshal determined that the Fire Code prohibits apartment residents from placing any type of waste container outside their door because the residents are placing an obstruction in a building's means of egress and combustible waste in a building's exit.²⁴

¹⁷ Section 1001.3 of the 6th edition of the Florida Building Code (Building).

¹⁸ Email from Colton Madill, Deputy Legislative Affairs Director, Department of Business and Professional Regulation, Florida Building Code questions (Dec. 18, 2017).

¹⁹ Section 3.3.63 of the 6th edition of the Florida Fire Prevention Code (NFPA 1, Fire Code).

²⁰ Section 3.3.62 of the 6th edition of the Florida Fire Prevention Code (NFPA 1, Fire Code).

²¹ Section 10.19.4 and 19.2.1.4 of the 6th edition of the Florida Fire Prevention Code (NFPA 1, Fire Code).

²² Department of Financial Services, Agency Analysis of 2018 House Bill 529, p. 1 (Nov. 29, 2017).

²³ *See Id.*

²⁴ *See In the matter of: William Harrison, Fire Marshal Clermont Fire Department*, Case No.: 188696-16-DS (Fla. DFS) (June 21, 2016); *In the matter of: Steve Strong, Fire Marshal Clearwater Fire & Rescue*, Case No.: 196979-16-DS (Fla. DFS) (Dec. 23, 2016).

Effect of the Bill

The bill provides that residents of apartment buildings may place combustible waste and refuse in exit access corridors in apartment buildings if the following conditions are met:

- Doorstep refuse and recycling collection containers do not exceed 13 gallons for apartment buildings with enclosed corridors and interior or exterior stairs;
- Doorstep refuse and recycling collection containers do not exceed 27 gallons for apartment buildings with open air corridors and exterior stairs or balconies with exterior exit stairs;
- Waste, which is in a doorstep refuse and recycling collection container, is not placed in an exit access corridor for a single period greater than 5 hours;
- Doorstep refuse and recycling collection containers are not in an exit access corridor for a single period greater than 12 hours for apartment buildings with enclosed corridors and interior or exterior stairs;
- Doorstep refuse and recycling collection containers do not reduce the exit access corridor's width below the width required by the Fire Code;
- Doorstep refuse and recycling collection containers are able to stand upright on their own and may not leak fluids when standing upright; and
- The apartment's management staff have written policies and procedures to ensure compliance with the above conditions. Management staff must enforce the policies and must provide a copy of the policies to the authority having jurisdiction upon request.

The bill provides that the local fire marshal may approve alternative containers or storage arrangements that are equivalent to the bill's requirements.

Apartment complexes must comply with the bill's requirements by December 31, 2020.

Sunset provision

The bill expires on July 1, 2021. The 7th edition of the Fire Code is expected to take effect in January 2021. The bill's expiration date allows waste collection companies time to work with the State Fire Marshal to add the language of the bill to the 7th edition of the Fire Code through the code adoption process.

B. SECTION DIRECTORY:

Section 1. Amends s. 633.202, F.S., providing that residents in apartments may place combustible waste and refuse in an apartment's exit corridors under certain conditions, providing for local fire officials to approve alternative containers, providing an expiration date.

Section 2. Provides an effective date of July 1, 2018.

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:

Unknown.

2. Expenditures:

Unknown. According to DFS, the bill creates new apartment classifications that the Fire Code currently does not use. This may require local fire marshals to do additional inspections and classifications for apartment complexes that use doorstep waste collection providers.²⁵

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will allow doorstep waste collection companies to continue operating in the state.²⁶

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Currently the bill provides “the authority having jurisdiction shall allow apartment occupancies a phase-in period until December 31, 2020, to comply with this subsection.” It is unclear whether this provision should only apply to the container size requirements. It is further unclear which portion of the bill will be a “phase-in.” This may need clarification.

DFS prefers that any change made to the Fire Code be made through the code adoption process instead of being made in statute. According to DFS, the Fire code is an inclusive and flexible document that the Fire Marshal amends every three years to include technological advancements and emerging documents. According to DFS, this results in the Fire Code being able to accommodate changes more quickly than changes being made to statute. Additionally, the Fire Marshal can make amendments following situations involving fires that require a change in operating procedures or requirements.²⁷

²⁵ Department of Financial Services, *supra*, note 19, at 3.

²⁶ *Id.*

²⁷ Email from Kimberly Renspie, Deputy Legislative Affairs Director, Florida Department of Financial Services, Response to questions on HB 529, (Dec. 12, 2017).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 18, 2018, the Commerce Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Replaces “waste container” with “doorstep refuse and recycling collection container.”
- Provides that a doorstep refuse and recycling collection container must be able to stand upright on its own and may not leak fluids when standing upright.
- Provides that only waste that is in a doorstep refuse and recycling collection container is permitted to be in an exit access corridor.
- Replaces “exit corridor” with “exit access corridor.”
- Removes the requirement that doorstep refuse and recycling collection containers may only be in an exit access corridor for 12 hours when the apartment building has open air corridors or balconies with exterior exit stairs.

This analysis is drafted to the committee substitute as passed by the Commerce Committee.