

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 Banking and Insurance

BILL: SB 746

INTRODUCER: Senator Bean

SUBJECT: Florida Fire Prevention Code

DATE: January 22, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>RI</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 746 establishes a 3 year exemption to the Fire Prevention Code to allow for the limited storage of garbage cans and trash within the hallways of apartment buildings that utilizes a doorstep waste pickup service.

The bill limits apartment buildings with enclosed corridors to garbage cans no greater than 13 gallons and cannot occupy the hallway for greater than 12 hours at a time. For apartment buildings with open-air corridors or balconies serviced by exterior stairs the garbage cans may be left permanently in the hallway and cannot be greater than 27 gallons in size. In all cases the garbage cans cannot reduce the means of egress width below that required under NFPA Life Safety Code 101:31 and trash placed in either size garbage can must be collected within 5 hours when occupying the hallway.

Additionally, the management of an apartment complex utilizing a doorstep waste collection service that would operate under this new law must have written policies and procedures in place and enforce them to insure compliance. A copy of such policies and procedures can be requested and must be provided to the authority having jurisdiction.

The bill delays the enforcement of the new exemptions and requirements until December 31, 2020, and sunsets all exemptions and requirements on July 1, 2021.

The bill has an effective date of July 1, 2018.

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 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 3 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

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 January 17, 2018).

⁴ *Id.*

⁵ s. 633.104(6), F.S.

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 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 3 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

⁶ ss. 633.108 and 633.208, F.S.

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).

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

However, the Building Code provides that maintenance of a building's means of egress must be in accordance with the Fire Code.¹⁷ The Department of Business and Professional Regulation 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;

¹² International Code Council, *Accessible Means of Egress*,

<https://www.iccsafe.org/safety/Documents/MeansofEgressBroch.pdf> (last visited January 17, 2018).

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).

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

¹⁸ Email from Department of Business and Professional Regulation, Florida Building Code questions (On file with Banking and Insurance Committee).

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).

- 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 Waste 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

III. Effect of Proposed Changes:

SB 746 establishes exemptions to the Fire Prevention Code to allow doorstep waste collection services to continue to operate in apartment buildings until changes to the Fire Prevention Code can be pursued during the next triannual update in 2021. The management of an apartment complex utilizing a doorstep waste collection service under this exemption must have written policies and procedures in place and enforce them to insure compliance. A copy of such policies and procedures can be requested and must be provided to the authority having jurisdiction.

The law would allow tenants in apartment buildings with enclosed corridors to place garbage cans no greater than 13 gallons into the exterior hallway for no more than 12 hours at a time. The garbage cans cannot reduce the means of egress width below that required under NFPA Life Safety Code 101:31 and waste contained in such garbage cans must be collected within 5 hours when occupying the hallway.

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 Senate Bill 746 (November 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).

For apartment buildings with open-air corridors or balconies serviced by exterior stairs the tenants may leave garbage cans permanently in the hallway and such cans cannot be greater than 27 gallons in size. The garbage cans cannot reduce the means of egress width below that required under NFPA Life Safety Code 101:31 and waste contained in such garbage cans must be collected within 5 hours when occupying the hallway.

While the bill prohibits the garbage cans from reducing the means of egress below the width that is required under NFPA Life Safety Code 101:31, it should be noted, with regards to egress, the bill would preempt NFPA 101:7.1.10.1 which provides that the means of egress shall be continuously maintained free of all obstructions or impediments to full instant use in the case of fire or other emergency.

The bill allows a phase in period from July 1, 2018 – December 31, 2020, before an authority having jurisdiction would be allowed to enforce the requirements of the bill.

Based on the two declaratory statements released by the State Fire Marshal the bill would exempt the following code requirements of the Fire Prevention Code:²⁵

- NFPA 1:19.1.3 provides that combustible waste or refuse shall be properly stored or disposed of to prevent unsafe conditions.
- NFPA 1:10.19.4 provides that combustible material shall not be stored in exits.
- NFPA 101:7.1.10.1 provides that the means of egress shall be continuously maintained free of all obstructions or impediments to full instant use in the case of fire or other emergency.
- NFPA 1:19.2.1.2.1 describes the requirements for nonmetallic rubbish containers exceeding a capacity of 40 gallons. (This code would only be exempt during the bills phase in period from July 1, 2018 – December 31, 2020.)

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²⁵ 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).

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

None.

B. Private Sector Impact:

Doorstep waste pickup service will be allowed to operate in apartment buildings while changes are pursued to the Fire Prevention Code.

C. Government Sector Impact:

Local authorities having jurisdiction are prohibited from enforcing any of the requirements of the bill until December 31, 2020.

VI. Technical Deficiencies:

The bill is intended to allow time for changes to be made to the Fire Prevention Code that is updated every 3 years. However, if changes are made to the Fire Prevention Code during the next tri-annual review those changes would go into effect on January 1, 2021. The Sunset date for the requirements of the bill is June 1, 2021.

VII. Related Issues:

The bill allows a phase in until December 31, 2020, before a local authority having jurisdiction would be allowed to enforce the requirements of the bill. By exempting the Fire Prevention Code with the requirements of the bill, and delaying enforcement until December 31, 2020, the bill could potentially prevent any enforcement from being issued regardless of how out of compliant an apartment building was during the phase in period.

VIII. Statutes Affected:

This bill substantially amends section 633.202 of the Florida Statutes.

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

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

None.

B. Amendments:

None.