

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 Rules

BILL: CS/SB 746

INTRODUCER: Banking and Insurance Committee and Senator Bean

SUBJECT: Florida Fire Prevention Code

DATE: February 22, 2018

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	Fav/CS
2. <u>Kraemer</u>	<u>McSwain</u>	<u>RI</u>	Favorable
3. <u>Matiyow</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 746 establishes a three-year exemption to the Florida Fire Prevention Code to allow for the limited placement of waste containers and waste within the hallways of apartment buildings that utilize a doorstep refuse and recycling collection service.

A doorstep waste collection service may operate in apartment buildings with enclosed corridors served by interior or exterior exit stairs, if waste is not placed in exit access corridors for longer than five hours; waste containers do not occupy exit access corridors for longer than 12 hours; and effective January 1, 2020, waste containers do not exceed 13 gallons. For apartment buildings with open-air corridors or balconies serviced by exterior stairs, waste cannot be placed in exit access corridors for longer than five hours; there is no limit on how long waste containers may occupy access corridors; and effective January 1, 2020, waste containers may not exceed 27 gallons.

In all cases the waste containers cannot reduce the means of egress width below that required under NFPA Life Safety Code 101:31. 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 has a legislative intent statement to make clear the requirements in the bill are not intended to set precedent for future changes to the Florida Fire Prevention Code.

The three-year exemption for the limited placement of waste containers and waste within the hallways of apartment buildings that utilize a doorstep waste collection service expires January 1, 2021.

SB 746 has no impact on state government.

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.²

Adoption and Interpretation of the Florida Fire Prevention Code

The State Fire Marshal also adopts by rule³ 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.

The State Fire Marshal adopts a new edition of the Fire Code every three years.⁴ 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),⁵ including the:

- NFPA's Fire Code (Standard 1);
- Life Safety Code (NFPA 101); and

¹ Section 633.104, F.S.

² See ss. 633.104, 633.106, 633.112, 633.115, 633.126, and 633.128, F.S.

³ See Fla. Admin. Code R. Ch. 69A-60 (2018) at <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=69A-60> (last visited Feb. 1, 2018).

⁴ Section 633.202, F.S.

⁵ Section 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).

- Guide on Alternative Approaches to Life Safety (NFPA 101A).⁶

The State Fire Marshal may modify the national fire safety and life safety standards as needed to accommodate the specific needs of the state.⁷

The most recent Fire Code is the 6th edition, referred to as the 2017 Florida Fire Prevention Code which took effect on December 31, 2017.⁸ The State Marshal has authority to interpret the Fire Code, and is the only authority that may issue a declaratory statement relating to the Fire Code.⁹

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.¹⁰ 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.¹¹

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.¹² Each county, municipality, and special district with fire safety enforcement responsibilities is 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.¹³

Section 633.208(5), F.S., provides “[w]ith regard to existing buildings, the Legislature recognizes that it is not always practical to apply any or all of the provisions of the Florida Fire Prevention Code and that physical limitations may require disproportionate effort or expense with little increase in fire or life safety.” Local fire officials must apply the Fire Code for existing buildings to the extent practical to ensure a reasonable degree of life safety and safety of property.¹⁴ The local fire officials are also required to fashion reasonable alternatives that afford an equivalent degree of life safety and safety of property.¹⁵

⁶ See ss. 633.202(1) and 633.208(5), F.S.

⁷ *Id.*

⁸ See <https://www.myfloridacfo.com/Division/SFM/BFP/FloridaFirePreventionCodePage.htm> (last visited Feb. 1, 2018), for access to a read-only version of the Fire Code, which consists of 1295 pages. The Fire Code is also available for purchase. *Id.*

⁹ Section 633.104(6), F.S.

¹⁰ Sections 633.108 and 633.208, F.S.

¹¹ Sections 633.208 and 633.214(4), F.S.

¹² Section 633.118, F.S.

¹³ Section 633.216(1), F.S.

¹⁴ Section 633.208(5), F.S.

¹⁵ *Id.*

Florida Building Code

Part IV of ch. 553, F.S., the Florida Building Codes Act, provides a mechanism for the uniform adoption, updating, amendment, interpretation, and enforcement of the Florida Building Code¹⁶ by the Florida Building Commission (commission).¹⁷ The commission reviews the most current updates of various international codes published by the International Code Council,¹⁸ as well as the National Electric Code, every three years to determine if the Building Code requires updating to maintain eligibility for federal funding.¹⁹

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:

- Exit access;
- Exit; and
- Exit discharge²⁰

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.²¹

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.²² 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.²³

The Building Code²⁴ also provides that a building's means of egress must be a certain width determined by the number of occupants in the building.²⁵ The Building Code provides that the *required width* of a building's means of egress must be free of all obstructions and impediments.²⁶

¹⁶ The Florida Building Code is a single set of documents that apply to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities, and to the enforcement of such requirements. See s. 553.72(1), F.S., which also indicates that effective and reasonable protection for public safety, health, and general welfare at the most reasonable cost to the consumer is also intended.

¹⁷ See s. 553.72(3), F.S. The commission is housed within the Department of Business and Professional Regulation (DBPR).

¹⁸ See s. 553.72(1), F.S.

¹⁹ Section 553.73(7)(a), F.S.

²⁰ Section 3.3.176 of the 6th edition of the Florida Fire Prevention Code (NFPA 1, Fire Code).

²¹ International Code Council, *Accessible Means of Egress*,

<https://www.iccsafe.org/safety/Documents/MeansofEgressBroch.pdf> (last visited Feb. 1, 2018).

²² See Section 7.3.4 of the 6th edition of the Florida Fire Prevention Code (NFPA 101, Life Safety Code).

²³ Section 7.1.10.1 of the 6th edition of the Florida Fire Prevention Code (NFPA 101, Life Safety Code).

²⁴ The Building Code may be reviewed at <https://codes.iccsafe.org/public/document/FBC2017> (last visited Feb. 1, 2018).

²⁵ Section 1005 of the 6th edition of the Florida Building Code (Building).

²⁶ 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.²⁷ The Department of Business and Professional Regulation (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.²⁸

Combustible Waste and Refuse

The Fire Code defines *combustible waste* as “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.”²⁹

The Fire Code defines *combustible refuse* as “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.”³⁰

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

- Stored in a container less than 1.5 cubic yards (302 gallons);
- Stored in an enclosed area with a one hour fire resistance rating and an automatic sprinkler system;
- Removed from the building once each working day unless the waste and refuse is stored in a noncombustible room; and
- Not stored in the building's exit(s).³¹

Private Doorstep Waste Collection Providers

Currently, various providers offer doorstep waste collection services to apartment complexes throughout the state. According to the DFS, 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.³² The waste collection companies collect the contents of the containers at a specified time.³³

An apartment complex resident's front door typically 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 the DFS, the Fire Code does not allow the storage of combustible material in exits.³⁴

²⁷ Section 1001.3 of the 6th edition of the Florida Building Code (Building).

²⁸ Email from Department of Business and Professional Regulation staff, to Senate Committee on Banking and Insurance staff (Dec. 18, 2017) (on file with Senate Committee on Regulated Industries).

²⁹ Section 3.3.62 of the 6th edition of the Florida Fire Prevention Code (NFPA 1, Fire Code).

³⁰ Section 3.3.61 of the 6th edition of the Florida Fire Prevention Code (NFPA 1, Fire Code).

³¹ See Sections 10.18.4, 19.2.1.3, 19.2.1.4 and 19.2.1.4.1 of the 6th edition of the Florida Fire Prevention Code (NFPA 1, Fire Code).

³² See *Department of Financial Services Analysis for SB 746*, dated Nov. 9, 2017 (on file with Senate Committee on Regulated Industries) at page 1.

³³ *Id.*

³⁴ *Id.*

In two recent declaratory statements, the State Fire Marshal determined that apartments may not allow residents to place refuse and recycling containers outside their front doors regardless of the size of the container or if the container's contents are removed daily. The State Fire Marshal determined that the Fire Code prohibits apartment residents from placing any type of combustible material may be stored in containers outside their doors because the residents are placing obstructions in a building's means of egress and combustible waste in a building's exit.³⁵

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 633.202(20), F.S., to establish a three-year exemption to the Fire Code to allow for the limited placement of refuse and recycling containers and waste within the hallways of apartment buildings that utilize a doorstep waste pickup service.

A doorstep waste collection service may operate in apartment buildings with enclosed corridors served by interior or exterior exit stairs, if waste is not placed in exit access corridors for longer than five hours; waste containers do not occupy exit access corridors for longer than 12 hours; and effective January 1, 2020, waste containers do not exceed 13 gallons. For apartment buildings with open-air corridors or balconies serviced by exterior stairs waste cannot be placed in exit access corridors for longer than 5 hours; there is no limit on how long waste containers may occupy access corridors; and effective January 1, 2020, waste containers may not exceed 27 gallons.

In all cases 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. Additionally, waste containers may not reduce the means of egress width below that required under NFPA Life Safety Code 101:31.

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."

Based on the two declaratory statements issued by the State Fire Marshal, the operations of doorstep waste collection services that comply with the provisions in the bill would be exempt from the following Fire Code requirements:³⁶

- NFPA 1:19.1.3 (combustible waste or refuse shall be properly stored or disposed of to prevent unsafe conditions).
- NFPA 1:10.19.4 (combustible material shall not be stored in exits).
- NFPA 101:7.1.10.1 (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 (requirements for nonmetallic rubbish containers exceeding a capacity of 40 gallons may be enforced only from January 1, 2020, to January 1, 2021.)

³⁵ See *In the matter of: William Harrison, Fire Marshal, Clermont Fire Department*, Case No.: 188696-16-DS (Fla. DFS) (Jun. 21, 2016) and *In the matter of: Steve Strong, Fire Marshal, Clearwater Fire & Rescue*, Case No.: 196979-16-DS (Fla. DFS) (Dec. 23, 2016) (on file with Senate Committee on Regulated Industries).

³⁶ *Id.*

The bill contains a legislative intent statement that:

- The legislature intends to allow doorstep refuse and recycling collection containers in exit corridors pursuant to the requirements in the bill until the adoption of the next edition of the Fire Code; and
- The requirements in the bill do not establish precedent regarding standards for such collection containers in exit corridors in future editions of the Fire Code, and that the State Fire Marshal exercise independent discretion when adopting such standards.

CS/SB 746 sunsets the Fire Code exemptions created by the bill effective January 1, 2021.

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

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:

Doorstep waste refuse and recycling collection services will be allowed to operate in apartment buildings while changes are pursued to the Fire Code.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 633.202 of the Florida Statutes.

IX. Additional Information:

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

CS by Banking and Insurance on January 23, 2018:

The CS:

- Delays enforcement on waste container size until January 1, 2020.
- Provides a legislative intent statement.
- Provides a sunset date of January 1, 2021.

- B. **Amendments:**

None.