

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 971 Florida Fire Prevention Code

SPONSOR(S): Insurance & Banking Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee		Vanlandingham	Cooper

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 most recent version of the FFPC adopted mandatory fire flow requirements intended to assure an adequate water supply for fire suppression. Some jurisdictions have said they are unwilling or unable to meet these standards and are continuing to build new homes that do not comply with the FFPC fire flow requirements. The Division of State Fire Marshall has begun a rulemaking process intended to resolve such disagreements.

The PCS preempts the rulemaking by providing that “in rural areas or small communities,” fire flow requirements “may be decreased” by the authority that has jurisdiction for isolated buildings or a group of buildings, if that authority determines “that the development of full fire flow requirements is impractical.” The PCS may significantly reduce costs for local governments that could opt out of costly infrastructure upgrades required to comply with current fire flow standards. It is unknown whether such opt-outs could result in increased risk to firefighters or higher local insurance rates for businesses and homeowners.

The PCS also addresses an apparent discrepancy between the FFPC and the Florida Building Code that currently requires costly 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 PCS provides that for structures of less than three storeys 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 significant 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.

Existing law exempts “farm outbuildings” from the FFPC. The PCS expands this exemption to “farming or ranching structures”, so long as they are part of an operation that employs fewer than 25 full-time equivalent workers, the structure is not used by the public for direct sales or as an educational outreach facility, and it is not used for residential or assembly occupancies. This change could result in significant cost savings for farmer or ranchers who own buildings that would no longer be required to comply with the FFPC. However, because it is not clear what type of buildings would be classified as “farming or ranching structures,” nor how much broader this exemption would be than the current exemption for “farm outbuildings,” the PCS’s impact on insurance rates and associated fire risks cannot be assessed.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Proposed Committee Substitute (PCS) 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 PCS amends s. 633.0215, F.S., in three principal ways:

1) Fire flow requirements

Fire flow requirements are intended to assure an adequate water supply for fire suppression by establishing minimum water flow rates required to control and extinguish fires that may occur within certain types of property subject to specific occupancy classifications. The “required fire flow” is the rate of flow needed for firefighting purposes to confine a major fire to the buildings within a block or other contiguous grouping. The determination of this flow depends upon the size, construction, occupancy, and exposure of buildings within and surrounding the block or group of buildings.

Historically, the determination of required fire flow has been made by local fire authorities having jurisdiction. An important resource in making this determination has been the Guide for Determination of Required Fire Flow, published by the Insurance Services Office (ISO), a private ratings agency that measures the major elements of a community’s fire suppression system, including its fire department, emergency communications, and water supply.² Following inspection and review of a community’s firefighting capabilities, ISO issues a numerical grade, called a Public Protection Classification, which is often used by property and casualty insurers as a tool for calculating insurance rates. This means that a community’s investment in fire protection infrastructure often has a direct impact in reducing the community’s property insurance rates. In addition to this incentive for adopting adequate fire flow rates, the 2007 edition of the Florida Fire Prevention Code contained recommended standards for fire flow rates that communities were encouraged to adopt.³

However, the current 2010 edition of the FFPC, which went into effect on December 31, 2011, made fire flow requirements mandatory for the first time. These requirements apply to both residential and commercial buildings.⁴ Some jurisdictions, such as the City of Naples, have said they are unwilling or unable to meet these standards and are continuing to build new homes that do not comply with the FFPC fire flow requirements.⁵ This is partly because of aging infrastructure and partly because Naples is building some of the largest homes in Florida, often in excess of 7,000 square feet.⁶ The FFPC requires new homes of 5,000 square feet or fewer to have access to water that flows at 1,000 gallons

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

² <http://www.isomitigation.com/fsrs/Fire-Suppression-Rating-Schedule-Overview.html>

³ NFPA 1, Annex H.

⁴ NFPA 1:18.4

⁵ <http://www.naplesnews.com/news/2013/jan/29/naples-officials-push-for-changes-to-water-flow/>

⁶ *Id.*

per minute for one hour, but larger homes must meet higher requirements on a sliding scale for different gallon and duration requirements.⁷

a. Pending rulemaking

The SFM has begun rulemaking to help resolve this conflict. After conferring with stakeholders, the agency has issued a Notice of Proposed Rule to amend the FFPC to clarify that heightened fire flow requirements “shall be considered a recommendation for construction of one and two-family dwellings located on in-fill lots in existing neighborhoods and subdivisions.”⁸ SFM is holding a hearing on the proposed rule, which is scheduled for March 27, 2013.⁹

b. Effect of the PCS on fire flow requirements

The PCS effectively preempts the rulemaking by amending s. 633.0215, F.S., governing the Florida Fire Prevention Code, to provide that “in rural areas or small communities,” fire flow requirements “may be decreased” by the authority that has jurisdiction for isolated buildings or a group of buildings, if that authority determines “that the development of full fire flow requirements is impractical.”

“Rural areas” is defined by the FFPC as “areas that are not unsettled wilderness or uninhabitable territory but are sparsely populated with densities below 500 persons per square mile.”¹⁰ However, “small community” appears to be undefined in the code, presenting a potential drafting issue that is discussed below.

The PCS may result in significant cost savings for local governments that opt out of fire flow requirements and avoid costly infrastructure upgrades to boost water flow pressures to current standards.

It is unknown whether such opt-outs could result in increased risk to firefighters or higher local insurance rates for businesses and homeowners.

2) Wall fire-rating requirements

Both the Florida Fire Prevention Code¹¹ and the Florida Building Code¹² require that where different parts of a building comprise different categories of occupancy, those buildings must have 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 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.

⁷ *Id.*

⁸ Notice of Proposed Rule, published in FAR Feb. 7, 2013, amending rule 69A-60.003.

⁹ Scheduled for 1 p.m., at the Alexander Building, Conference Room, Suite 230A, 2020 Capital Circle SE, Tallahassee.

¹⁰ NFPA s. 3.3.18

¹¹ 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).

¹² Florida Building Code sections 508.1, 508.2, 508.3 and 508.4.

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 shop goes out of business and the building leases its space to a barber shop or a law office, then the FFPC requires the wall between the two spaces to 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.

a. Effect of the PCS on wall fire-rating requirements

The PCS 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, 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.

3) 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.

a. Effect of the PCS on farming and ranching structures

The PCS provides that a “farming or ranching structure” is exempt from the FFPC, so long as it is part of an operation that employs fewer than 25 full-time equivalent workers. Further, the structure must 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.¹³

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

However, because it is not clear what type of buildings would be classified as “farming or ranching structures,” nor how much broader this exemption would be than the current exemption for “farm outbuildings,” the PCS’s impact on insurance rates and associated fire risks cannot be assessed.

B. SECTION DIRECTORY:

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

¹³ Assembly occupancy includes any gathering of 50 people or more.
STORAGE NAME: pcs0971.IBS
DATE: 3/26/2013

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The PCS may significantly reduce costs for local governments that could opt out of costly infrastructure upgrades required to comply with current fire flow standards.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The PCS may result in significant 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 PCS 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 PCS may result in increased insurance rates for local property owners impacted by reduced fire flow 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 PCS 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:

“Small community” appears to be undefined in the FFPC, which could lead to disputes between the SFM and local authorities having jurisdiction, which may argue they are entitled to opt out of the fire flow requirements. Moreover, “isolated buildings” or “group of buildings” are similarly undefined by the code. Further, the language providing that “fire flow requirements may be decreased ... if that authority determines that the development of full fire flow requirements is impractical” fails to communicate how much these flow requirements may be decreased, or what standards the local authority having jurisdiction should use for determining impracticability. To address these issues and to balance the need for state fire flow standards against flexibility for local governments to whom those standards may be ill suited, rulemaking may offer an additional approach.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES