

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 6053 Doorstep Waste Containers

**SPONSOR(S):** Yarborough

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 904

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	15 Y, 2 N	Brackett	Anstead
2) Commerce Committee		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 local government in 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 access 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 or lead to the building's exit access.

During the 2018 Legislative Session, the Legislature temporarily allowed residents in apartment buildings to place combustible waste and refuse in an exit access corridor if certain conditions were met. These statutory changes were not adopted by the State Fire Marshal in the Fire Code. Current law allows waste containers to be placed in an apartment building's exit access corridors if:

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

Apartment complexes were given a phase-in period to comply with these requirements, which ended on December 31, 2020.

The provisions allowing the placement of waste and refuse containers in an exit access corridor expire on July 1, 2021.

The bill repeals the July 1, 2021 expiration date for the statutory provisions, thus allowing residents in apartment complexes to continue placing waste outside their front door for pick up by waste collection services, which may conflict with the Fire Code.

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

The bill provides an effective date of July 1, 2021.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Current Situation**

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.<sup>1</sup> 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.<sup>2</sup> 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).<sup>3</sup>

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

The most recent Fire Code is the 7th edition, which is referred to as the 2020 Florida Fire Prevention Code. The 7th edition of the Fire Code took effect on December 31, 2020.<sup>5</sup>

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.<sup>6</sup>

#### **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.<sup>7</sup> These local enforcing authorities may adopt more stringent fire

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<sup>1</sup> S. 633.104, F.S.

<sup>2</sup> S. 633.202, F.S.

<sup>3</sup> 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 Feb. 28, 2021).

<sup>4</sup> *Id.*

<sup>5</sup> Division of State Fire Marshal, *Florida Fire Prevention Code (FFPC)*, <https://www.myfloridacfo.com/division/sfm/bfp/floridafirepreventioncodepage.htm> (last visited Feb. 28, 2021).

<sup>6</sup> S. 633.104(6), F.S.

<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup>

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 must 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.<sup>11</sup>

## 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:<sup>12</sup>

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

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.<sup>13</sup>

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.<sup>14</sup> 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.<sup>15</sup>

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<sup>8</sup> Ss. 633.208 and 633.214(4), F.S.

<sup>9</sup> S. 633.118, F.S.

<sup>10</sup> S. 633.216(1), F.S.

<sup>11</sup> S. 553.73(7)(a), F.S.

<sup>12</sup> Section 3.3.182 of the 7th edition of the Florida Fire Prevention Code (NFPA 1, Fire Code).

<sup>13</sup> Section 202 of the 7th edition of the Florida Building Code (Building); Richmond ICC, *2018 Annual Conference Education Sessions, Session: 2018 IBC Essentials – Means of Egress & Fire Protection*, <https://www.iccsafe.org/wp-content/uploads/2018-IBC-Essentials-%E2%80%93-Means-of-Egress-Fire-Protection.pdf> (last visited Feb. 28, 2021).

<sup>14</sup> See Section 7.3.4 of the 7th edition of the Florida Fire Prevention Code (NFPA 101, Life Safety Code).

<sup>15</sup> Section 7.1.10.1 of the 7th edition of the Florida Fire Prevention Code (NFPA 101, Life Safety Code).

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.<sup>16</sup> The Building Code provides that the *required width* of a building's means of egress must be free of all obstructions and impediments.<sup>17</sup>

However, the Building Code provides that maintenance of a building's means of egress must be in accordance with the Fire Code.<sup>18</sup> 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.<sup>19</sup>

### **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.<sup>20</sup>

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.<sup>21</sup>

Combustible waste and refuse may be stored in an apartment building if the combustible waste and refuse is:<sup>22</sup>

- Stored in a container less than 1.5 cubic yards (302 gallons) or 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).

### **Private Doorstep Collection Providers**

Currently, there are various providers offering doorstep refuse and recycling 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 doorstep refuse and recycling collection providers then come by and collect the waste at a specified time.<sup>23</sup>

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 refuse and recycling collection providers are violating the Fire Code by allowing residents to place combustible waste and refuse in their buildings' means of egress.<sup>24</sup>

In 2016, the State Fire Marshal issued declaratory statements determining 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.<sup>25</sup>

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<sup>16</sup> Section 1005 of the 7th edition of the Florida Building Code (Building).

<sup>17</sup> Section 1018.1, 1020.3, and 1024.2 of the 7th edition of the Florida Building Code (Building).

<sup>18</sup> Section 1001.3 of the 6th edition of the Florida Building Code (Building).

<sup>19</sup> Email from Vicky Summerhill, Office of Legislative Affairs, Department of Business and Professional Regulation, FW: Florida Building Code questions (Mar. 4, 2021).

<sup>20</sup> Section 3.3.63 of the 7th edition of the Florida Fire Prevention Code (NFPA 1, Fire Code).

<sup>21</sup> Section 3.3.62 of the 7th edition of the Florida Fire Prevention Code (NFPA 1, Fire Code).

<sup>22</sup> Section 10.18.4 and 19.2.1 of the 7th edition of the Florida Fire Prevention Code (NFPA 1, Fire Code).

<sup>23</sup> Department of Financial Services, Agency Analysis of 2018 House Bill 529, p. 1 (Nov. 29, 2017).

<sup>24</sup> *Id.*

<sup>25</sup> 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).

During the 2018 Legislative Session, the Legislature temporarily allowed refuse and recycling containers to be placed in exit access corridors in apartment buildings if the following conditions are met:<sup>26</sup>

- 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 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;
- 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.

Apartment complexes were given a phase in period to comply with these requirements. Apartments had to comply with the requirements by December 31, 2020. Local fire marshals were given authority to approve alternative containers or storage arrangements that are equivalent to these requirements.<sup>27</sup> However, these requirements sunset on July 1, 2021. The purpose of the sunset date was to give the various providers time to work with the State Fire Marshal to develop an amendment to the Fire Code, which is the State Fire Marshal's preferred method for amending the Fire Code.<sup>28</sup>

According to DFS, the State Fire Marshal adopted an amendment to the Fire Code, which took effect when the 7th edition of the Fire Code became effective on December 31, 2020, intended to allow the various doorstep refuse and recycling collection providers to keep operating.<sup>29</sup> The amendment provides that waste and refuse may be placed in exits, exit passageways, enclosures for stairs or ramps, corridors, elevator lobbies, or egress balconies if:<sup>30</sup>

- 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 containers do not exceed 15 gallons;
- Doorstep refuse and recycling collection containers are not in an exit access corridor for a single period greater than 15 hours;
- Doorstep refuse and recycling collection containers do not reduce the exit access corridor's width below the width required by the Fire Code;
- 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; and
- Waste or refuse must be placed completely inside one or more containers with a closed lid.

After July 1, 2021, the following provisions in the amendment to the Fire Code take effect:<sup>31</sup>

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<sup>26</sup> S. 633.202(20), F.S.; *See* House Analysis of 2018 House Bill 529 (Apr. 9, 2018).

<sup>27</sup> *Id.*

<sup>28</sup> *See* The Florida Channel, 1/9/18 House Careers and Competition Subcommittee, <https://thefloridachannel.org/videos/1-9-18-house-careers-competition-subcommittee/> (last visited Feb. 28, 2021).

<sup>29</sup> Department of Financial Services, Agency Analysis of 2021 House Bill 6053, p. 1 (Mar. 2, 2021).

<sup>30</sup> Sections 10.18.4.1 and 10.18.4.1.1 of the 7th edition of the Florida Fire Prevention Code (NFPA 1, Fire Code).

<sup>31</sup> *Id.*

- Containers and lids located in an area that is not protected by fire sprinklers must be **made entirely of noncombustible materials** that comply with the Fire Code.<sup>32</sup>
- Containers and lids located in an area that is protected by fire sprinklers does not have to made entirely of noncombustible materials that comply with the Fire Code.

Proponents of repealing the sunset date argue that the amendment to the Fire Code requires apartment complex residents and doorstep refuse and recycling collection providers to use refuse and recycling containers that are not readily available. Opponents of repealing the sunset date argue that repealing the sunset date will allow refuse and recycling containers, which do not comply with the Fire Code, to be placed in apartment access corridors.<sup>33</sup>

### **Effect of the Bill**

The bill repeals the sunset date of July 1, 2021. Thus leaving the provisions in s. 633.202(20), F.S., that allow refuse and recycling containers to be lawfully placed in exit access corridors just as they have been since the adoption of the provisions in 2018.

The bill also repeals the phase in period, which provisions had to be complied with by December 31, 2020.

#### **B. SECTION DIRECTORY:**

Section 1. Amends s. 633.202, F.S., repealing a sunset date and a phase in period.

Section 2. Provides an effective date of July 1, 2021.

## **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:**

None.

##### **2. Expenditures:**

None.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Indeterminate. It is unknown what the cost would be for apartment complex residents and the various doorstep refuse and recycling providers to purchase refuse and recycling containers that meet the requirements of the Fire Code.

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<sup>32</sup> Noncombustible materials must meet a peak rate of heat release not exceeding 150 kW/m<sup>2</sup> when tested in accordance with ASTM E 1354 at an incident heat flux of 50kW/m<sup>2</sup> in the horizontal orientation. Containers and lids must be listed or have a label from an approved agency that the container or lid meets the Fire Code's requirement. *Id.*

<sup>33</sup> See The Florida Channel, 3/3/21 Senate Committee on Community Affairs, <https://thefloridachannel.org/videos/3-3-21-senate-committee-on-community-affairs/> (last visited Mar. 4, 2021).

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to DFS, removing the sunset date and the phase in period would create a conflict between Florida Statutes and amendments to the Fire Code.

“The proposed bill language would allow trash containers with no fire-rated requirements and located in the hallways used for egress, to obstruct the means of egress which would cause obstacles to life safety in case of emergency. All of subsection (20) needs to be repealed in accordance with the sunset provisions set forth in the law because it is in conflict with and would cause confusion with the 7th edition of the Florida Fire Prevention Code, which became effective December 31, 2020.”<sup>34</sup>

However, the statutory requirements for placing refuse and recycling containers in exit access corridors in apartment buildings has been in effect for 3 years, and the State Fire Marshal has not cited any incidents that would indicate problems with the statutory requirements.

The statutory requirements for placing refuse and recycling containers in exit access corridors in apartment buildings would also most likely supersede any requirements in the Fire Code, and thus would not conflict or cause confusion with the Fire Code. The Florida Supreme Court has ruled that a specific statute covering a particular subject area always controls over a statute covering the same and other subjects in more general terms, and when two statutes are in conflict, the later promulgated statute should prevail as the last expression of legislative intent.<sup>35</sup>

The Legislature adopted the statutory requirements placing refuse and recycling containers in exit access corridors in apartment buildings after adopting the statute granting the State Fire Marshal authority to the adopt the Fire Code.<sup>36</sup> The statute providing the requirements for placing refuse and recycling containers in exit access corridors specifically provides such requirements, whereas the statute granting the State Fire Marshal authority to adopt the Fire Code is more general and covers other subjects related to fire safety.

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<sup>34</sup> Department of Financial Services *supra* note 29.

<sup>35</sup> *McKendry v. State of Florida*, 641 So. 2d 45 (Fla. 1994).

<sup>36</sup> Ch. 2018-152, Laws of Fla.; Ch. 2000-141, Laws of Fla.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES