

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 431 Firesafety

**SPONSOR(S):** Regulatory Affairs Committee; Insurance & Banking Subcommittee; Raburn; Combee and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 822

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Bauer	Luczynski
2) Regulatory Affairs Committee	17 Y, 0 N, As CS	Bauer	Hamon

### SUMMARY ANALYSIS

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer (CFO) as the State Fire Marshal, and requires the State Fire Marshal to adopt the Florida Fire Prevention Code (FFPC) by rule every three years. The FFPC sets forth firesafety 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.

Exemptions from the FFPC: Currently, a structure located on agricultural property is exempt from the FFPC if the occupancy is limited to 35 persons and is not used by the public for direct sales or as an educational outreach facility. Tents up to 30 feet by 30 feet are also exempt. Nonresidential farm buildings are currently exempt from the Florida Building Code and county and municipal codes, but not from the FFPC.

The bill creates a new exemption from the FFPC and national codes for *agricultural pole barns*, which are nonresidential farm buildings in which 70 percent or more of the perimeter walls are permanently open and allow free ingress and egress. In addition, the bill revises the two existing exemptions from the FFPC and national codes by:

- Restating the current exemption for tents to be up to 900 square feet, and
- Revising the current exemption for structures located on agricultural property and limited to a maximum occupancy for 35 persons to exempt a "nonresidential farm building" with a maximum occupancy of 35 persons and removes the exclusion on use by the public for direct sales or as an educational outreach facility.

Farm Structures Used for Agritourism Activity: The bill provides that a structure on a farm (other than agricultural pole barns) which its owner uses for agritourism activity and for which the owner receives consideration must be classified into one of three classes, and requires the State Fire Marshal to adopt rules to implement these classifications, including alternative lifesafety and fire prevention standards for Class 1 and Class 2 structures:

- *Class 1:* A nonresidential farm building used by the owner 12 times per year or fewer for agritourism activity with a maximum occupancy of 100 persons. These structures are subject to local inspection and State Fire Marshal rules, but not subject to the FFPC.
- *Class 2:* A nonresidential farm building used by the owner for agritourism activity with a maximum occupancy of 300 persons. These structures are subject to local inspection and State Fire Marshal rules, but are not subject to the FFPC.
- *Class 3:* A structure used for the primary use of housing, sheltering, or accommodating the general public. Class 3 structures are subject to local inspection and the FFPC.

Additionally, the bill permits local fire officials to consider certain alternative national life safety approaches as a low-cost, reasonable alternative to minimum firesafety standards, with regard to existing buildings.

The bill has minimal to no fiscal impact on state government. The bill has an indeterminate fiscal impact on local governments by decreasing review fees due to broadened class of structures exempted the FFPC, but may be offset by the annual inspections of farm structures used for agritourism activity. The bill should have a positive fiscal impact on the private sector.

The bill has an effective date of July 1, 2016.

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

STORAGE NAME: h0431d.RAC

DATE: 1/26/2016

## 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 (CFO) 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 firesafety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; and operates the Florida State Fire College.

In addition to these duties, the State Fire Marshal adopts by rule the Florida Fire Prevention Code (FFPC), 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 FFPC every three years.<sup>2</sup> The FFPC includes national firesafety and life safety standards set forth by the National Fire Protection Association (NFPA),<sup>3</sup> including the NFPA's Fire Code (1), Life Safety Code (101) and Guide on Alternative Approaches to Life Safety (101A).

###### *Fire Safety Enforcement by Local Governments*

State law requires all municipalities, counties, and special districts with firesafety responsibilities to enforce the FFPC as the minimum fire prevention code to operate uniformly among local governments and in conjunction with the Florida Building Code.<sup>4</sup> These local enforcing authorities may adopt more stringent fire safety standards, subject to certain requirements in s. 633.208, F.S.,<sup>5</sup> but may not enact fire safety ordinances which conflict with ch. 633, F.S., or any other state law.<sup>6</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>7</sup> Each county, municipality, and special district with firesafety 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>8</sup>

Since the Legislature recognizes that it is not always practical to apply any or all of the provisions of the FFPC, under the minimum fire safety standards, the local fire officials shall apply the applicable fire

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

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

<sup>3</sup> Founded in 1895, the NFPA is a global, nonprofit organization devoted to eliminating death, injury, property and economic loss due to fire, electrical and related hazards. It has developed over 300 voluntary consensus codes and standards in the areas of fire, electrical, and building safety which are widely used by state and local officials. NATIONAL FIRE PROTECTION ASSOCIATION, *About NFPA*, at <http://www.nfpa.org/about-nfpa> (last viewed Nov. 9, 2015). The NFPA states that the Guide on Alternative Approaches to Life Safety "is intended to be used in conjunction with the Life Safety Code (101), not as a substitute." NATIONAL FIRE PROTECTION ASSOCIATION, *NFPA 101A: Guide on Alternative Approaches to Life Safety*, at <http://www.nfpa.org/codes-and-standards/document-information-pages?mode=code&code=101a> (last viewed Nov. 9, 2015).

<sup>4</sup> ss. 633.108 and 633.208, F.S.

<sup>5</sup> s. 633.208, F.S.; *see also* s. 633.102(21), F.S., for the definition of "minimum firesafety standard" and Rule 69A-60.002, F.A.C.

<sup>6</sup> s. 633.214(4), F.S. A list of local amendments to the FFPC is available at DIVISION OF STATE FIRE MARSHAL, *Local Amendments*: <http://www.myfloridacfo.com/division/sfm/BFP/LocalAmendments.htm> (last viewed Nov. 12, 2015).

<sup>7</sup> s. 633.118, F.S.

<sup>8</sup> s. 633.216(1), F.S.

safety 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.<sup>9</sup>

### *Current Exemptions from the FFPC*

Currently, s. 633.202(16), F.S., exempts two types of structures from the FFPC and national codes incorporated by reference:

- A structure located on property that classified as agricultural for ad valorem purposes and which is part of a farming or ranching operation, if the occupancy is limited by the property owner to no more than 35 persons and is not used by the public for direct sales or as an educational outreach facility. Structures used for residential or assembly purposes (as defined in the FFPC) are not included in this exemption.<sup>10</sup>
- Tents up to 30 feet by 30 feet.

“Nonresidential farm buildings” are currently *not* exempt from the FFPC, but are exempt from the Florida Building Code and any county or municipal code or fee, except for code provisions implementing local, state, or federal floodplain management regulations.<sup>11</sup> These structures are defined under s. 604.50, F.S., as any temporary or permanent building or support structure that is classified as a nonresidential farm building on a farm for the purposes of the Florida Building Code, or that is classified as agricultural land for assessment purposes, is used primarily for agricultural purposes, is located on land that is an integral part of a farm operation and is not intended to be used as a residential dwelling. The term may include, but is not limited to, a barn, greenhouse, shade house, farm office, storage building, or poultry house.

### *Agritourism Activity*

An “agritourism activity” is any agricultural related activity consistent with a bona fide farm or ranch or in a working forest that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy activities, including farming, ranching, historical, cultural, or harvest-your-own activities and attractions.<sup>12</sup> “Agritourism activity” does *not* include the construction of new or additional structures or facilities intended primarily to house, shelter transport, or otherwise accommodate members of the general public. Agritourism is one of the many methods farmers use to diversify and expand their income.

In 2007, the Florida Legislature enacted HB 1427, authorizing the Department of Agriculture and Consumer Services (DACCS) to provide marketing advice, technical expertise, promotional support, and product development related to agritourism to assist various entities, including local governments, in their agritourism initiatives.<sup>13</sup> The 2007 legislation does not grant regulatory authority to DACCS or any other state agency over agritourism activities, but directs local governments and agricultural representatives to meet on issues such as conflict resolution and regulatory streamlining.<sup>14</sup> In 2013, the Florida Legislature enacted SB 1106, codified in part as s. 570.85, F.S.<sup>15</sup> The statute prohibits a local government from *adopting* ordinances, regulations, rules, or policies that prohibit, restrict, regulate, or otherwise limit an agritourism activity on land that has been classified as agricultural land

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<sup>9</sup> s. 633.208, F.S.

<sup>10</sup> Chapter 6 of the FFPC defines “residential occupancy” as “an occupancy that provides sleeping accommodations for purposes other than health care or detention and correctional,” and defines “assembly occupancy” as “an occupancy (1) used for a gathering of 50 or more persons for deliberation, worship, entertainment, eating, drinking, amusement, awaiting transportation, or similar uses; or (2) used as a special amusement building, regardless of occupant load.” See NFPA, *Classification of Occupancy and Hazard of Contents*, <http://codesonline.nfpa.org/a/c.ref/ID020101110939/chapter> (last viewed Nov. 12, 2015).

<sup>11</sup> s. 604.50(1), F.S.

<sup>12</sup> s. 570.86(1), F.S. Legislation filed for the 2016 session (CS/CS/HB 59) would expand the definition of “agritourism activity” to include civic or ceremonial activities, such as weddings and charitable fundraisers held on a farm.

<sup>13</sup> Ch. 2007-244, Laws of Fla., codified at s. 570.85, F.S.

<sup>14</sup> s. 570.87, F.S.

<sup>15</sup> Ch. 2013-179, Laws of Fla.

under Florida's greenbelt law.<sup>16</sup> The statute also provides limited liability protection for landowners conducting agritourism activities on their property.<sup>17</sup>

It does not appear that either ch. 633, F.S., or the FFPC specifically address agritourism activity. However, the FFPC and national codes currently provide that events held in any location, *whether agricultural or not*, that are considered assembly, mercantile, or business in nature, require a building to change occupancy type. When this occurs, the property owner must bring the building up to the new fire prevention code standards for that occupancy type. This may require the installation of several fire protection features such as fire sprinklers, fire alarm systems, or egress capacity.<sup>18</sup>

### **Effect of the Bill**

The bill broadens the types of structures exempt from the FFPC by amending the two existing exemptions to the FFPC, creates an agricultural pole barn exemption to the FFPC, and creates a 3-tier classification system for structures on farms<sup>19</sup> used for agritourism activity, as defined in s. 570.86, F.S. Additionally, the bill allows local fire officials to consider the fire safety evaluation systems found in the NFPA's Guide on Alternative Approaches to Life Safety (101A) as an acceptable systems for identifying reasonable alternatives to current minimum firesafety standards in s. 633.208, F.S., with regard to existing buildings.

- *Agricultural pole barns*: The bill exempts "agricultural pole barns" from the FFPC, including the national codes and the Life Safety Code incorporated by reference. The bill defines "agricultural pole barns" as a nonresidential farm building in which 70 percent or more of the perimeter walls are permanently open and allow free ingress and egress.
- *Nonresidential farm buildings*: The bill amends the current FFPC exemption in s. 633.202(16), F.S., for structures located on agricultural property, to provide that "nonresidential farm buildings" (which the bill provides has the same meaning as s. 604.50, F.S.) that the property owner limits occupancy to more than 35 persons are exempt from the FFPC. The bill also removes the exclusion on use of by the public for direct sales or as educational outreach facilities.

By providing that the term "nonresidential farm building" has the same meaning as in s. 604.50, F.S., the bill exempts from the FFPC and national codes:

Any temporary or permanent building or support structure that is classified as a nonresidential farm building on a farm under s. 553.73(10)(c) [the Building Code] or that *is used primarily for agricultural purposes*, is located on land that is an integral part of a farm operation or is classified as agricultural land under s. 193.461, and is not intended to be used as a residential dwelling.

As such, buildings such as barns, greenhouses, shade houses, farm offices, storage buildings, or poultry houses would be exempt from the FFPC, if used primarily for agricultural purposes.

- *Tents*: The bill also restates the current FFPC exemption for 30 feet by 30 feet tents from the FFPC to 900 square feet.

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<sup>16</sup> s. 570.85, F.S. CS/HB 59 (2016) would also prohibit local governments from *enforcing* local ordinances, regulations, rules, or policies that prohibit, restrict, regulate, or otherwise agritourism activities on agricultural land.

<sup>17</sup> s. 570.88, F.S.

<sup>18</sup> Florida Department of Financial Services, Agency Analysis of 2016 House Bill 413, p. 1 (Nov. 12, 2015). The FFPC and national codes define *assembly occupancy* as an occupancy used for a gathering of 50 or more persons for deliberation, worship, entertainment, eating, drinking, amusement, awaiting transportation, or similar uses; or (2) used as a special amusement building, regardless of occupant load (e.g., dance halls, museums, skating rinks). *Mercantile occupancy* means an occupancy used for the display and sale of merchandise (e.g., drugstores and supermarkets). *Business occupancy* means an occupancy used for the transaction of business other than mercantile (e.g., city and town halls, doctors' offices).

<sup>19</sup> The bill refers to s. 823.14(3)(a), F.S., for the definition of "farm," which means the land, buildings, support facilities, machinery, and other appurtenances used for the production of farm or aquaculture products."

- *Farm structures used for agritourism activity.* The bill requires structures on a farm that its owner uses agritourism activity as defined in s. 570.86, F.S. (other than agricultural pole barns), and for which the owner receives consideration, to be classified in one of three classes, described in further detail below.
- *Rulemaking authority for State Fire Marshal:* The bill requires the State Fire Marshal to adopt rules relating to farm structures used for agritourism activity, “including, but not limited to” the use of alternative life safety and fire prevention standards and notification and inspection requirements for Class 1 and Class 2 structures, as well as the application of the FFPC to Class 3 structures, and any other standards or rules necessary to facilitate the use of farm structures for agritourism activities.

<b>Structure</b>	<b>Requirements</b>	<b>Occupancy Limit</b>	<b>FFPC Applicability</b>
<i>Agricultural pole barn</i>  (treated as a nonresidential farm building in the bill)	70% or more of the perimeter walls are permanently open and allow free ingress/egress.	None	Exempt
<i>Tent</i>	Up to 900 square feet.	None	Exempt
<i>Nonresidential farm building</i>  (the bill refers to the term as defined in s. 604.50, F.S.)	Used primarily for agricultural purposes, is located on land that is an integral part of a farm operation or is classified as agricultural land for tax purposes, and is not intended to be used as a residential dwelling.	Up to 35 persons	Exempt
<i>Class 1 farm structure used for agritourism activity</i> (except for agricultural pole barns)	Nonresidential farm building used by the owner for agritourism activity 12 times per year or fewer.	Up to 100 persons	Subject to local inspection and alternative standards in State Fire Marshal rules, but exempt from FFPC.
<i>Class 2 farm structure used for agritourism activity</i> (except for agricultural pole barns)	Nonresidential farm building used by the owner for agritourism activity.	Up to 300 persons	Subject to local inspection and alternative standards in State Fire Marshal rules, but exempt from FFPC.
<i>Class 3 farm structure used for agritourism activity</i> (except for agricultural pole barns)	New/additional or existing structure or facility used for the primary purpose of housing, sheltering, or otherwise accommodating the general public.	None	Subject to local inspection and the FFPC.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 633.202, F.S., relating to the Florida Fire Prevention Code.

Section 2. Amends s. 633.208, F.S., relating to minimum firesafety standards.

Section 3. Provides an effective date of July 1, 2016.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The bill requires the State Fire Marshal to adopt rules relating to the classification and inspection of structures used for agritourism activity, but DFS noted this would be a minimal impact.<sup>20</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

Indeterminate. The bill may decrease review fees arising from the exemption of nonresidential farm buildings from the FFPC, but may be offset by the new annual inspections of farm structures used for agritourism activity.

2. Expenditures:

See above.

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

Indeterminate positive fiscal impact on agricultural property owners, since bill allows some farm structures used for agritourism activity to be subject to alternative lifesafety and fire prevention standards instead of the FFPC.

**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.

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<sup>20</sup> Florida Department of Financial Services, Agency Analysis of 2016 House Bill 431, p.2 (Nov. 12, 2015).

**B. RULE-MAKING AUTHORITY:**

The bill requires the State Fire Marshal to adopt rules to administer the bill's new exemptions from the FFPC, "including, but not limited to" the three new classes of structures used for agritourism activity.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On November 18, 2015, the Insurance & Banking Subcommittee considered and adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Adopted a three-level classification system for farm structures used for "assembly, business, or mercantile" activity, instead of the original bill's classification system based on use for agritourism activity;
- Provided that structures on a "farm" (as defined in s. 823.14(3)(a), F.S.) used by the owner for "assembly, business, or mercantile activity" must be classified in one of three classes, with occupancy and use requirements and State Fire Marshal rulemaking authority similar to that of the original House bill's three-level agritourism structures; and
- Subjects Class 2 and Class 3 structures to annual inspection by local authorities.

On January 21, 2016, the Regulatory Affairs Committee considered and adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Revised the three-level classification system for farm structures to apply to "agritourism activity" as defined in s. 570.86, F.S., rather than "assembly, business, or mercantile activity,"
- Clarified that the three-level classification system does not apply to agricultural pole barns;
- Clarified that Class 1 structures are subject to annual inspection for classification by local authorities, but are not subject to the FFPC; and
- Subjects Class 1 and Class 2 structures to rules adopted by the State Fire Marshal, including notification and inspection requirements.

The analysis has been updated to reflect the committee substitute.