

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1041 Fire Prevention and Control
SPONSOR(S): Garcia, L.
TIED BILLS: HB 1051 **IDEN./SIM. BILLS:** SB 2388

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Financial Institutions</u>	<u>6 Y, 0 N</u>	<u>Holt/Bradford</u>	<u>Haug</u>
2) <u>Jobs & Entrepreneurship Council</u>	<u></u>	<u></u>	<u></u>
3) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

HB 1041 generally codifies current agency practices, expands authority, and revises certain requirements. More specifically, the bill:

- Provides for the State Fire Marshal to make certain firesafety inspections and require corrective actions.
- Clarifies that agents appointed by the State Fire Marshal are under her/his control and direction.
- Expands the uniform firesafety standards to include tunnels.
- Provides for inspections of educational property and public post secondary facilities.
- Expands the investigative authority of the State Fire Marshal to include explosions.
- Abolishes special state firesafety inspector classification.
- Provides for certification as a firesafety inspector; provides application and examination requirements.
- Authorizes the State Fire Marshal to develop an advanced training and certification program for firesafety inspectors.
- Authorizes the Division of State Fire Marshal to enter into a reciprocity agreement with the Florida Building Code Administrators and Inspectors Board for certain continuing education recertification purposes
- Revises requirements for the State Fire Marshal to inspect state buildings.
- Revises and expands the authority and powers of the State Fire Marshal to administer oaths, request attendance of witnesses, and collect evidence.
- Provides under certain circumstances forms of immunity from liability
- Exempts certain information from discovery, and under certain circumstances, the bill exempts agents of the State Fire Marshal from subpoena.
- Specifies limitations on treatment of physical evidence.
- Authorizes agents of the State Fire Marshal to have arrests powers equivalent to state law enforcement.
- Establishes the Arson and Destructive Device Reward Program.
- Expands the list of violations for which the State Fire Marshal may issue certain enforcement orders; providing criminal penalties for failure to comply with such orders
- Specifies criteria for commission of fraudulent insurance acts
- Revises certain definitions
- Revises requirements for firefighter training and certification
- Requires the Division of State Fire Marshal to establish training programs for certain certifications
- Authorizes the State Fire Marshal to contract for certain examinations.
- Fiscal impacts to the State, Local Governments and the private sector are indeterminate.

This act shall take effect July 1, 2008.

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

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Maintain public security: Expands the uniform firesafety standards to include tunnels; provides for inspections of educational property, public post secondary facilities by the State Fire Marshal; expands State Fire Marshal's authority to investigate explosions.

B. EFFECT OF PROPOSED CHANGES:

Sections 1-25 amend chapter 633, Fire Prevention and Control

Section 1: Amends subsection (7) of s. 633.01, F.S., State Fire Marshal; powers and duties; rules.— The bill deletes language from s. 633.01 to conform to s. 633.0221 relating to fire safety in education facilities.

Section 2: Amends s. 633.02, F.S., Agents; powers and duties; compensation.— The bill clarifies that agents appointed by the State Fire Marshal are under the control and direction of the State Fire Marshal.

Section 3: Amends paragraph (b) of subsection (1) of s. 633.022, F.S., Uniform firesafety standards.— The bill expands the applicability of the uniform firesafety standards to apply to tunnels.

Section 4: Creates s. 633.0221, F.S., Firesafety in educational facilities.-- The bill moves many of the provisions currently in s. 1013.13 relating to use and management of educational facilities to this section. Several responsibilities in the bill are required of the board. The term "board" in chapter 1013 reads:

(3) "Board," unless otherwise specified, means a district school board, a community college board of trustees, a university board of trustees, and the Board of Trustees for the Florida School for the Deaf and the Blind. The term "board" does not include the State Board of Education or the Board of Governors.

The term "Board" means the Florida Fire Safety Board in chapter 633. It is unclear which definition applies.

Section 5: Amends s. 633.03, F.S., Investigation of fire; reports.— Currently, this section reads:

The State Fire Marshal shall investigate the cause, origin, and circumstances of every fire occurring in this state wherein property has been damaged or destroyed where there is probable cause to believe that the fire was the result of carelessness or design. Report of all such investigations shall be made on approved forms to be furnished by the fire marshal.

The bill expands the State Fire Marshal's investigation authority to included damage or destruction caused by explosion. Additionally, this section changes the investigation threshold from probable cause to "as the State Fire Marshal deems necessary."

Section 6: Amends s. 633.081, F.S., Inspection of buildings and equipment; orders; firesafety inspection training requirements; certification; disciplinary action.— This section provides the State Fire Marshal and her or his agents' discretion to conduct inspections.

Subsection (3) of s. 633.081, F.S., reads:

(3) Each special state firesafety inspection which is required by law and is conducted by or on behalf of an agency of the state must be performed by an individual who has met the provision of subsection (2), except that the duration of the training program shall not exceed 120 hours of specific training for the type of property that such special state firesafety inspectors are assigned to inspect.

The bill provides that effective July 1, 2011, the classification of special state firesafety inspector is abolished and all special state firesafety inspector certifications expire at midnight June 30, 2011. Any person who is a special state firesafety inspector on June 30, 2011, and who has failed to comply with specific criteria to become a certified firesafety inspector, shall not be permitted to perform any firesafety inspection required by law. Further, certification as a special state firesafety inspector may not be awarded after June 30, 2008.

Rulemaking authority is granted to the State Fire Marshal to develop an advanced training and certification program for firesafety inspectors with fire code management responsibility. Additionally, the Division of State Fire Marshal may enter into a reciprocity agreement with the Florida Building Code Administrators and Inspectors Board to facilitate joint recognition of continuing education recertification hours for certain licensees and certified firesafety inspectors.

Other changes are made in this section to conform to abolishment of the special state firesafety inspector classification.

Section 7: Amends paragraph (a) of subsection (1) and subsections (2), (3), and (4) of section 633.085, F.S., Inspections of state buildings and premises; tests of firesafety equipment; building plans to be approved.— This section clarifies that when a building is located on land owned by the State and used primarily for state purposes, it shall be treated as a state-owned building for purposes of fire safety. Additionally, this section requires the State Fire Marshal to ensure that fire drills are held in all state-owned and state-leased high hazard buildings annually.

Section 8: Amends s. 633.101, F.S., Hearings; investigations; investigatory powers of State Fire Marshal; costs of service and witness fees.— This section is substantially rewritten and includes the following provisions:

- The State Fire Marshal may administer oaths and affirmations, request the attendance of witnesses or proffering of matter, and collect evidence, in state or out of state. The State Fire marshal may respond to similar request from officials of other states.
- The State Fire Marshal may request circuit court intervention when an individual refuses to comply with certain investigative requests. However, the court shall not order such compliance unless the request has a direct bearing to the State Fire Marshal's jurisdiction and the alleged act, constitutes a felony or misdemeanor under this chapter, the Florida Insurance Code, or a fraudulent insurance act, or is pertinent and necessary to further such investigation. An exception is provided in prosecution for perjury.
- In the absence of fraud or bad faith, a person is not subject to civil liability for libel, slander, or any other relevant tort by virtue of furnishing information, without malice, as required by this chapter or State Fire Marshal authority. Under certain circumstances, no civil cause of action of any nature shall arise against a person for providing specified information. In addition to such immunity this section specifies how such issues are reviewed when a designated employee is involved.
- This section does not abrogate or modify in any way common-law or statutory privilege or immunity otherwise enjoyed by any person.

- Papers, documents, reports, or evidence relative to an investigation under this section shall not be subject to discovery until the investigation is completed or ceases to be active. Agents of the State Fire Marshal shall not be subject to subpoena in civil actions by any court of this state to testify concerning any matter of which they have knowledge pursuant to a pending investigation by the State Fire Marshal.
- Physical evidence that is not capable of being copied or reproduced shall not constitute a public record and shall be disposed of in accordance with s. 705.105. During the pendency of an active investigation, physical evidence shall not be subject to subpoena until the investigation is completed or ceases to be active, unless the State Fire Marshal consents to release of the physical evidence.
- Any person, insurer, agent, or other person licensed under the Florida Insurance Code, or an employee of such licensees shall report to the State Fire Marshal any acts involving arson, destructive devices, fraudulent insurance acts or any other act or practice which, upon conviction, constitutes a felony or a misdemeanor under State laws. If the State Fire Marshal orders an independent examination of the facts and criminal acts have been committed, a referral is made to the appropriate prosecuting agency. Also, if prosecution by the state attorney or other prosecuting agency has not begun within 60 days, this section requires the prosecuting agency to inform the State Fire Marshal of the reasons for the lack of pursuit.
- State Fire Marshals who fulfill certain certification and other requirements are considered state law enforcement officers.

Section 9: Amends s. 633.121, F.S., Persons authorized to enforce laws and rules of State Fire Marshal.— This section makes conforming change.

Section 10: Amends s. 633.13, F.S., State Fire Marshal; authority of agents.— Currently, the section reads:

The authority given the State Fire Marshal under this law may be exercised by his or her agents, either individually or in conjunction with any other state or local official charged with similar responsibilities.

The bill clarifies that authority is given the State Fire Marshal under this chapter, or any rule or order adopted by the State Fire Marshal.

Section 11: Creates s. 633.145, F.S., Arson and Destructive Device Reward Program.-- The Arson and Destructive Device Reward Program is within the Department of Financial Services (Department) and is to be funded from the Insurance Regulatory Trust Fund. The department may pay rewards of up to \$25,000 to persons providing information leading to the arrest and conviction of persons committing crimes involving arson and destructive devices investigated by the Bureau of Fire and Arson Investigations. Rulemaking authority is granted to implement the program. Determination of awards is discretionary by the department. Such determinations are not agency actions subject to review under s. 120.569 or s. 120.57 and are not final orders or appealable in any court of appeal.

Section 12: Amends subsections (1) and (3) of section 633.161, F.S., Violations; orders to cease and desist, correct hazardous conditions, preclude occupancy, or vacate; enforcement; penalties.— This section provides that in subsection (1) a: A fire department that is not operated by or under contract with a political subdivision as defined in s. 1.01, F.S., is a violation of this subsection. In subsection (3) a clarifying change is made.

Section 13: Amends subsection (1) of s. 633.171, F.S., Penalty for violation of law, rule, or order to cease and desist or for failure to comply with corrective order.— This section makes a clarifying change.

Section 14: Amends s. 633.175, F.S., Investigation of fraudulent insurance claims and crimes; immunity of insurance companies supplying information.— For purposes of this section, the bill defines a person who commits a fraudulent insurance act. Other changes to the section are clarifying.

Section 15: Amends s. 633.18, F.S., State Fire Marshal; hearings and investigations; subpoena of witnesses; orders of circuit court.— The bill makes clarifying change.

Section 16: Amends s. 633.30, F.S., Standards for firefighting; definitions.— This section defines the following terms: “Apprentice firefighter,” “Career firefighter,” “Fire department,” “Firefighter I,” “Firefighter II,” and “Fireground resource technician.”

Section 17: Amends s. 633.34, F.S., Firefighters; qualifications for employment.— This section amends and clarifies the qualifications for any person applying as a firefighter.

Section 18: Amends s. 633.35, F.S., Firefighter training and certification.— The section provides that the division shall establish by rule a firefighter training programs for certification as a 1) fireground resource technician, 2) apprentice firefighter, 3) firefighter I, and 4) firefighter II. Additionally, this section also provides for the issuance of certificates of compliance for certification in these four positions.

Section 19: Amends s. 633.351, F.S., Disciplinary action; firefighters; standards for revocation of certification.— This section changes the threshold for retaining firefighter certification in the case of felony conviction or certain misdemeanors.

Section 20: Amends s. 633.352, F.S., Retention of firefighter certification.— This section requires a firefighter who has not been active as a firefighter or volunteer firefighter for a 3 year period to retake and pass the written and practical portions of the examination specified in division rules. This requirement does not apply to state-certified firefighters who are certified and employed as full-time fire safety inspectors by a fire department employing agency. The bill adds that the 3 year period also tolls upon expiration of instruction certification.

Section 21: Amends subsections (1), (2), and (3) of s. 633.382, F.S., Firefighters; supplemental compensation.— This section makes a conforming change to the definition “firefighter” and the qualifications for supplemental compensation for a firefighter II. The bill provides additional compensation in the amount of \$150.00 to a firefighter II who receives a certain master’s degree from an accredited college or university.

Section 22: Amends s. 633.524, F.S., Certificate and permit fees; use and deposit of collected funds.— This section provides for the State Fire Marshal to enter into contracts with qualified public or private entities to provide examination services to applicants for certification and competency examinations administered by the State Fire Marshal; provides for payment of such fees for examinations to be paid directly to the testing contractor.

Section 23: Amends s. 633.541, F.S., Contracting without certificate prohibited; violations; penalty.— This section clarifies the prohibition of unlicensed individuals engaging in the business of fire protection contracting; provides an exemption for an owner to inspect fire protection systems in their personal home as long as it is a one or two family dwelling.

Section 24: Amends s. 633.811, F.S., Firefighter employer penalties.— This section creates penalty provision in the event any firefighter employer violates or fails or refuses to comply with the “Florida Firefighters Occupational Safety and Health Act.” This section provides that the division may issue an administrative cease and desist order, enforceable in the circuit court in the jurisdiction where the violation is occurring or has occurred, and assess an administrative fine against such firefighter employer of not less than \$100 nor more than \$1,000 for each violation and each day of each violation,

in addition to current penalties. The administrative penalty assessment shall be subject to the provisions of chapter 120.

Section 25: Amends subsection (3) of s. 633.821, F.S., Workplace safety.— This section removes outdated references.

Section 26: Amends s. 1013.12, F.S., Casualty, safety, sanitation, and firesafety standards and inspection of property.— This section deletes the provisions that were incorporated in s. 633.0221, Firesafety in educational facilities.

Section 27: Amends paragraph (e) of subsection (1) of s. 218.23, F.S., Revenue sharing with units of local government.— This section corrects a cross reference.

Section 28: Amends paragraph (b) of subsection (4) of s. 447.203, F.S., Definitions. This section corrects a cross reference.

Section 29: Repeals s. 633.14.

Section30: This act shall take effect July 1, 2008.

C. SECTION DIRECTORY:

Section 1: Amends State Fire Marshal; powers and duties; rules.

Section 2: Amends Agents; powers and duties; compensation.

Section 3: Amends Uniform firesafety standards.

Section 4: Creates s. 633.0221, F.S., Firesafety in educational facilities.

Section 5: Amends Investigation of fire; reports.

Section 6: Amends Inspection of buildings and equipment; orders; firesafety inspection training requirements; certification; disciplinary action.

Section 7: Inspections of state buildings and premises; tests of firesafety equipment; building plans to be approved.

Section 8: Amends Hearings; investigations; investigatory powers of State Fire Marshal; costs of service and witness fees.

Section 9: Amends Persons authorized to enforce laws and rules of State Fire Marshal.

Section 10: Amends State Fire Marshal; authority of agents.

Section 11: Creates Arson and Destructive Device Reward Program.

Section 12: Amends Violations; orders to cease and desist, correct hazardous conditions, preclude occupancy, or vacate; enforcement; penalties.

Section 13: Amends Penalty for violation of law, rule, or order to cease and desist or for failure to comply with corrective order.

Section 14: Amends Investigation of fraudulent insurance claims and crimes; immunity of insurance companies supplying information.

Section 15: Amends State Fire Marshal; hearings and investigations; subpoena of witnesses; orders of circuit court.

Section 16: Amends Standards for firefighting; definitions.

Section 17: Amends Firefighters; qualifications for employment.

Section 18: Amends Firefighter training and certification.

Section 19: Amends Disciplinary action; firefighters; standards for revocation of certification.

Section 20: Amends Retention of firefighter certification.

Section 21: Amends Firefighters; supplemental compensation.

Section 22: Amends Certificate and permit fees; use and deposit of collected funds.

Section 23: Amends Contracting without certificate prohibited; violations; penalty.

Section 24: Amends Firefighter employer penalties.

Section 25: Amends Workplace safety.

Section 26: Amends Casualty, safety, sanitation, and firesafety standards and inspection of property.

Section 27: Amends Revenue sharing with units of local government.

Section 28: Amends Definitions.
Section 29: Repeals s. 633.14.
Section30: This act shall take effect July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

Section 11 creates the Arson and Destructive Device Reward Program that rewards up to \$25,000 to persons providing information leading to the arrest and conviction of persons committing crimes involving arson and destructive devices investigated by the Bureau of Fire and Arson Investigations, it is not possible to identify how much the program may disburse in a given year.

Any firefighter II who receives from an accredited college or university a master's degree, which master's degree is applicable to fire department duties, as outlined in policy guidelines of the division shall receive one hundred and fifty dollars monthly. The actual cost to the department is undetermined at this time.

Florida Statutes 633.524 is amended to allow any applicant for any examination administered under the jurisdiction of the State Fire Marshal to pay the vendor directly instead of paying the department. The additional costs or cost benefits related to this change in contracting have not been determined.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

Indeterminate

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

Rule-making is granted to the State Fire Marshal

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

None

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 20, 2008, the Committee on Financial Institutions voted to recommend a strike-all amendment to the Jobs & Entrepreneurship Council. The amendment:

- Extends the State Fire Marshal Nursing Home Loan Program application deadline to July 1, 2009.
- Removes outdated terminology.
- Provides conforming language to include references to arson.
- Broadens agents' powers and authorities to include certified investigators.
- Deletes inadvertent inclusion of insurance fraud provision.
- Renames "Apprentice firefighter" term to "Fire service apprentice"
- Clarifies a certificate of compliance at level II replaces previous certificates.
- Removes applicability of firefighter II with a master's degree to qualify for supplemental compensation.
- Removes \$150 supplemental compensation for firefighter II with a master's degree.
- Removes the Arson and Destructive Device Reward Program.
- Extends term of appointees on the Florida Fire Code Advisory Council to two years from one year.
- Deletes annual fire safety report requirement
- Reenacts s. 633.14, F.S. Provides technical clarification.
- The financial impact on the DFS is limited to the cost of rulemaking.