

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 Banking and Insurance Committee

BILL: CS/SB 2388

INTRODUCER: Banking and Insurance Committee and Senator Saunders

SUBJECT: Fire Prevention and Control

DATE: April 1, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Emrich/Mays	Deffenbaugh	BI	Fav/CS
2.			CA	
3.			CJ	
4.			GA	
5.				
6.				

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

Committee Substitute for Senate Bill 2388 revises various provisions of the Fire Prevention and Control law under chapter 633, F.S., pursuant to the regulatory authority of the State Fire Marshal. The chapter designates the Chief Financial Officer as State Fire Marshal and, as such, carries out the duties of fire prevention, protection and control through the Division of State Fire Marshal. The legislation provides the following:

- Transfers the fire safety responsibilities of the State Fire Marshal for public educational facilities to chapter 633, F.S.;
- Expands and clarifies the powers and duties for law enforcement agents under the State Fire Marshal;
- Provides specified immunity from civil liability to certain persons who provide information to the State Fire Marshal relating to a crime involving arson, a destructive device, an illegal possession of explosives, a fraudulent insurance act, or felony or misdemeanor under ch. 633, F.S.;
- Revises requirements for firefighter training and certification, designates new firefighter classifications and eliminates the classification of special state firesafety inspector;

- Clarifies the authority of the State Fire Marshal to administer oaths, request attendance of witnesses, and collect evidence;
- Expands the applicability of uniform firesafety standards to include tunnels;
- Authorizes the State Fire Marshal to investigate the cause, origin and circumstances of explosions occurring in the state;
- Removes the requirement that nursing homes licensed under ch. 400, F.S., had to have “each hazardous area” of the home protected by an approved automatic sprinkler system by December 31, 2008;
- Extends the deadline for a qualified nursing home to apply for a limited loan guarantee from the State Fire Marshal Nursing Home Fire Protection Loan Guarantee Program for a fire protection system from June 30, 2006, to July 1, 2009;
- Allows manufactured buildings to be inspected at the point of manufacture if specific requirements are met and authorizes the DFS to adopt rules to administer these provisions;
- Makes conforming statutory references that define the term “firefighter” under s. 633.30, F.S.;
- Updates the firesafety standards for sprinkler systems installed in transient public lodging establishments;
- For initial licensure and renewal, a fire equipment technician must complete at least 16 hours of continuing education (CE) every 2 years;
- Authorizes the State Fire Marshal to develop by rule an advanced training and certification program for firesafety inspectors with fire code management responsibility;
- Provides that it is a violation of the certification for any career firefighter whose initial employment date is on or after July 1, 2008, to use tobacco products;.
- Authorizes the Division of State Fire Marshal to enter into a reciprocity agreement with the Florida Building Code Administrators and Inspectors Board for continuing education for specified building code inspectors and administrators and firesafety inspectors;
- Clarifies the definition of “state-owned buildings” for purposes of firesafety inspections; and
- Authorizes the State Fire Marshal to contract for certain examinations.

This bill substantially amends the following sections of the Florida Statutes: 218.23, 447.203, 553.895, 633.01, 633.02, 633.022, 633.0245, 633.025, 633.03, 633.061, 633.081, 633.085, 633.101, 633.121, 633.13, 633.14, 633.161, 633.171, 633.175, 633.18, 633.30, 633.34, 633.35, 633.351, 633.352, 633.382, 633.524, 633.541, 633.72, 633.811, 633.821 and 1013.12.

The bill creates the following section of the Florida Statutes: 633.0221.

II. Present Situation:

Fire Prevention and Control

Pursuant to chapter 633, F.S., the Chief Financial Officer (CFO) is designated as State Fire Marshal (SFM) and, as such, carries out the duties of fire prevention, protection and control through the Division of State Fire Marshal (Division).¹ Under ch. 633, F.S., the Division is authorized to regulate, train and certify fire service personnel; investigate the causes of fires; enforce the arson laws; regulate the installation of fire equipment; conduct fire safety inspections

¹ The head of the Department of Financial Services (DFS) is the Chief Financial Officer. The Division of State Fire Marshal is located within the DFS.

of state property; develop fire safety standards; provide facilities for the analysis of fire debris; and operate the Florida State Fire College.

The Division has four bureaus, including the functions of fire and arson investigations, standards and training, forensic fire and explosive analysis, and fire prevention. The fire and arson bureau is the law enforcement branch of the Division and last year received 3,643 requests for investigation, of which 1,908 were determined to be incendiary. Bureau agents made 529 arrests on active cases, and of those arrests, 87 percent resulted in convictions. The standards and training bureau operates the Florida State Fire College which last year trained over 6,000 firefighters in subjects ranging from basic fire fighting to advanced arson investigations. The bureau also governs over 30 certified firefighter training centers. The forensic bureau operates the only state forensic lab in the state providing forensic analysis of fire debris and explosive residue. Finally, the fire prevention bureau conducts fire code and boiler inspections and licenses, permits and certifies fire safety equipment operators, fireworks retailers, explosive operators and constructions mines.

III. Effect of Proposed Changes:

Section 1. Amends s. 218.23, F.S., relating to revenue sharing among local governments, to correct a statutory cross reference.

Section 2. Amends s. 447.203, F.S., relating to public employees, to correct a statutory cross reference.

Section 3. Amends s. 553.895, F.S., relating to firesafety. The bill updates the fire sprinkler standards for sprinkler systems installed in transient public lodging establishments.

Section 4. Amends s. 633.01, F.S., relating to State Fire Marshal (SFM) powers and duties, to delete a cross reference to s. 1013.12, F.S., related to educational facilities, in order to conform to provisions in section 7 of the bill which relate to fire safety inspections in educational facilities.

Section 5. Amends s. 633.02, F.S., relating to agents, to clarify that agents appointed by the SFM are under the control and direction of the SFM.

Section 6. Amends s. 633.022, F.S., pertaining to uniform firesafety standards, to expand the applicability of such standards to apply to tunnels. The bill provides that nursing homes licensed under ch. 400, F.S., are not required to have "each hazardous area" of the home protected by an approved automatic sprinkler system by December 31, 2008; however, such homes are still required by current law to be protected by approved automatic sprinkler systems no later than December 31, 2010.

Section 7. Creates s. 633.0221, F.S., establishing firesafety standards in educational facilities. The bill transfers existing language in s. 1013.12, F.S., pertaining to firesafety standards for educational and ancillary facilities, to this section. The bill specifies that the SFM, in consultation with the Department of Education (DOE), must adopt uniform firesafety standards

for educational and ancillary plants and facilities and provides that a firesafety evaluation system be used as an alternative firesafety inspection standard for existing facilities. The uniform firesafety standards and evaluation system must be administered and enforced by local fire officials and the standards used by all public agencies when inspecting public educational and ancillary plants.

Firesafety inspections of educational and ancillary plants must be done annually by persons certified by the Division of State Fire Marshal (Division) and, upon request of the SFM, the Board² must submit a copy of the firesafety inspection report to the SFM and local fire official. The Board shall include a plan of action and schedule of correction of each deficiency in each firesafety inspection report.

One firesafety inspection of each educational or ancillary plant must be conducted each fiscal year by the county, city or special fire control district in which the plant is located. Firesafety inspections of community college facilities and state universities must comply with the applicable rules of the SFM. The bill provides the SFM and DOE must adopt and administer rules relating to standards for the safety and health of occupants of educational and ancillary plants.

Section 8. Amends s. 633.0245, F.S., relating to the SFM Nursing Home Fire Protection Loan Guarantee Program (Program), to extend the deadline for a qualified nursing home to apply to the Program for a limited loan guarantee for a fire protection system from June 30, 2006, to July 1, 2009. According to the SFM, several nursing facilities could not complete thorough evaluations of their property in time to meet the imposed deadline.

Section 9. Amends s. 633.025, F.S., relating to minimum firesafety standards, to allow manufactured buildings to be inspected at the point of manufacture if specific requirements are met and authorizes the DFS to adopt rules to administer these provisions.

Section 10. Amends s. 633.03, F.S., relating to investigations of fire and explosions, to expand the SFM's investigative authority to include damage or destruction caused by an explosion. The bill clarifies that the SFM shall investigate fires and explosions where the "SFM deems an investigation is necessary."

Section 11. Amends s. 633.061, F.S., relating to fire suppression equipment, to replace the term "halon" with "clean agent" to be consistent with industry practice. The bill clarifies that a fire equipment technician's license or permit may not be renewed unless such licensee produces documentation evidencing completion of at least 16 hours of continuing education (CE) every 2 years.

Section 12. Amends s. 633.081, F.S., providing for inspection of buildings and equipment. The bill provides that the SFM, and her or his agents, "may" instead of "shall" inspect any and all buildings and structures which are subject to the requirements of ch. 633, F.S., and s. 509.215, F.S. (lodging and food service establishments). The bill provides that effective

² The term board in ch. 1013, F.S., unless otherwise specified, means a district school board, community college board of trustees, a university board of trustees and the Board of Trustees for the Florida School for the Deaf and Blind.

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 SFM to develop an advanced training and certification program for firesafety inspectors with fire code management responsibility. Additionally, the Division 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.

Section 13. Amends s. 633.085, F.S., pertaining to state buildings. The bill clarifies the term “state-owned building” for purposes of fire safety inspections to mean a building that is located on land owned by the State and used primarily for state purposes as determined by the SFM. The provision requires the SFM to ensure that fire drills are held in all state owned and leased high-hazard state buildings annually.

Section 14. Amends s. 633.101, F.S., relating to SFM powers. The bill clarifies the authority of the SFM as follows:

- The SFM may administer oaths and affirmations, request the attendance of witnesses or proffering of matter, and collect evidence, in this state or out of state. The SFM may respond to similar requests from officials of other states.
- The SFM 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 SFM’s jurisdiction and the alleged act, constitutes a felony or misdemeanor under this chapter, the Florida Insurance Code, a fraudulent insurance act, arson, 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 the SFM’s authority. Under certain circumstances, no civil cause of action of any nature shall arise against a person for providing specified information to the SFM.
- In the absence of bad faith or reckless disregard, specified investigative employees of the SFM are not civilly liable for sharing information relating to persons suspected of fraudulent acts with other employees.
- The above provisions do 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 SFM 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 SFM.

- 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, other than an insurer, agent, or other person licensed under the Insurance Code, having specified knowledge, may report to the SFM specified fraudulent insurance or other acts which, upon conviction, constitute a felony or misdemeanor under state law.
- Any insurer, agent, or other person licensed under the Florida Insurance Code, or an employee of such licensees, shall report to the SFM specified fraudulent insurance or other acts which, upon conviction, constitute a felony or misdemeanor under state law. If the SFM orders an independent examination of the facts and criminal acts have been committed, a referral is made to the appropriate prosecuting agency.
- Makes it unlawful for a person to resist arrest by an agent of the SFM or to interfere with a SFM investigator.

Section 15. Amends s. 633.121, F.S., pertaining to persons authorized to enforce laws and rules of State Fire Marshal. The bill provides that all certified law enforcement officers in the state, and acting upon the request of the SFM or a chief of a county, city or special district fire department, may enforce the provisions in ch. 633, F.S., and related rules.

Section 16. Amends s. 633.13, F.S., relating to the authority of agents of the SFM. The bill clarifies that authority given the State Fire Marshal under this chapter, rule or order may be exercised by his or her agents.

Section 17. Amends s. 633.14, F.S., relating to agent powers of the SFM. The bill provides that SFM agents and investigators have the power to make arrests for criminal violations and are considered state law enforcement officers for all purposes and have the power to execute arrest and search warrants; serve subpoenas; and arrest upon probable cause without warrant any person violating any provision of law. The bill authorizes such agents or investigators to bear arms and requires certification of compliance with s. 943.1395, F.S., unless exempted by the temporary employment requirements of s. 943.131, F.S.

Section 18. Amends s. 633.161, F.S., pertaining to violations and orders to cease and desist. The bill provides that it is a violation of this section for a fire department not to be operated by or under contract with a political subdivision as defined in s. 1.01, F.S. According to the Division, there are a number of volunteer fire departments which are not operated under contract or authorization by any county, city or special district.

Section 19. Amends s. 633.171, F.S., relating to penalties for violations, to clarify that persons violate the “chapter” and not the “law.”

Section 20. Amends s. 633.175, F.S., relating to investigation of fraudulent insurance claims. Provides that the provisions of this section are in addition to other powers granted by this chapter.

Section 21. Amends s. 633.18, F.S., relating to hearings and investigations. The bill clarifies that this section pertains to this chapter or SFM rule.

Section 22. Amends s. 633.30, F.S., relating to SFM standards. The bill defines the terms: “career firefighter,” “council,” “Division,” “employing agency,” “fire department,” “fire service apprentice,” “firefighter,” “firefighter I,” “firefighter II,” and “fireground resource technician” for purposes of this chapter.

Section 23. Amends s. 633.34, F.S., relating to qualifications for employment of firefighters. The bill clarifies the requirements for persons applying to employing agencies to function as firefighters. Such persons must never have been adjudicated guilty of, or plead guilty or nolo contendere to any felony, or misdemeanor involving moral turpitude, misleading or false statements relating to certification or employment as a firefighter. There is an exception for applicants convicted of a felony which provides that such applicants are not eligible for certification unless they comply with s. 112.011(2)(b), F.S. This section excludes fire department applicants, who have a prior felony conviction, from employment for 4 years after expiration of their sentence or final release, unless the applicants, prior to the expiration of the 4 years, have received a full pardon or had their civil rights restored.

The bill provides that if an applicant has been sentenced for any conviction of a felony or misdemeanor, the applicant is not eligible for certification until 4 years after expiration of any sentence. If the sentence is suspended or adjudication is withheld and probation is imposed, the applicant must have been released from probation. The bill also requires applicants to pay for and submit fingerprints.

The bill clarifies that persons who do not hold specified firefighter designations may not respond to or engage in hazardous operations which require knowledge and skills taught in training programs, regardless of their volunteer or employment status.

Section 24. Amends s. 633.35, F.S., pertaining to firefighter training and certification. The bill provides that the Division shall establish by rule firefighter training programs for certification as a: 1) fireground resource technician; 2) a fire service apprentice; 3) a firefighter I; and 4) a firefighter II. The bill states that the Division must issue certificates of compliance for certification to persons who have satisfactorily completed the training programs for these four positions.

Section 25. Amends s. 633.351, F.S., relating to disciplinary action. The bill specifies the circumstances, i.e., adjudication, pleading guilty or nolo contendere to any felony or specified misdemeanor, under which a firefighter’s certification is revoked and provides that, in cases of a felony, the certification may not be reinstated. The bill provides that it is a violation of the certification for any career firefighter whose initial employment date is on or after July 1, 2008, to use tobacco products and authorizes the Division to adopt rules relating to this provision.

Section 26. Amends s. 633.352, F.S., relating to retention of firefighter certifications. The bill clarifies that a certified firefighter who has not been active as a firefighter or volunteer firefighter for a 3-year period must retake and pass the written and practical portions of the examination specified in Division rules. The bill specifies when the 3-year period expires and provides that the 3-year 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 or to instructors regardless of their employment status.

Section 27. Amends s. 633.382, F.S., relating to firefighters. The bill makes a conforming change to the definition of “firefighter” and the qualifications for supplemental compensation for a firefighter II.

Section 28. Amends s. 633.524, F.S., relating to certificate and permit fees. The bill provides authority for the SFM to enter into contracts with qualified public or private entities to provide examination services to applicants for any examination administered under the jurisdiction of the SFM; provides for payment to be made directly from the applicants to the examination contractor.

Section 29. Amends s. 633.541, F.S., relating to contracting, to clarify the prohibition against non-certified fire protection contractors; provides an exemption for a home owner to inspect or maintain the fire protection system in his/her personal home if such home is a one or two family dwelling.

Section 30. Amends s. 633.72, F.S., relating to the Florida Fire Code Advisory Council, to provide that an appointee to the council may serve no more than two consecutive terms. The current law is one term.

Section 31. Amends s. 633.811, F.S., pertaining to firefighter employer penalties. The bill creates an administrative penalty for any firefighter employer who violates or fails or refuses to comply with the “Florida Firefighters Occupational Safety and Health Act” under ss. 633.801-633.821, F.S. The bill provides that the Division may issue a 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 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, F.S., the Administrative Procedure Act.

Section 32. Amends s. 633.821, F.S., relating to workplace safety, to remove outdated references.

Section 33. Amends s. 1013.12, F.S., relating to casualty, safety, sanitation, and firesafety standards and inspection of educational facilities. The bill deletes the provisions in this section that are now incorporated under section 7 of the bill.

Section 34. Provides for the act to take effect on July 1, 2008.

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:

Insurers, agents and other persons who furnish information to the SFM will be granted specified immunity from civil liability which should aid the SFM in its investigations. Nursing homes will benefit under the bill's provisions by having more time to apply for a fire protection system loan. Homeowners who own a one or two family home will benefit by not having to hire a licensed firm to maintain their fire protection system.

C. Government Sector Impact:

Clarifying the law enforcement authority of agents of the SFM should aid the agency in its investigations. Developing a training and certification program for firesafety inspectors with fire code management responsibility will allow the SFM to adhere to national standards. Authorizing the SFM to revise firefighter training, education and certification programs should add to the expertise of firefighters. Expanding the investigative authority of the SFM as to the cause and origin of explosions should aid other law enforcement entities that investigate such occurrences.

The financial impact of this legislation on the Department of Financial Services is limited to the cost of rulemaking.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. 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 April 1, 2008:

- Removes the requirement that nursing homes licensed under ch. 400, F.S., have “each hazardous area” of the home protected by an approved automatic sprinkler system by December 31, 2008;

- Extends the deadline for a qualified nursing home to apply for a limited loan guarantee from the State Fire Marshal Nursing Home Fire Protection Loan Guarantee Program for a fire protection system from June 30, 2006, to July 1, 2009;
- Allows manufactured buildings to be inspected at the point of manufacture if specific requirements are met and authorizes the DFS to adopt rules to administer these provisions;
- Makes conforming statutory references that define the term “firefighter” under s. 633.30, F.S.;
- Updates the firesafety standards for sprinkler systems installed in transient public lodging establishments;
- For initial licensure and renewal, a fire equipment technician must complete at least 16 hours of continuing education (CE) every 2 years;
- Deletes the provision stating that the State Fire Marshal and specified employees are not subject to civil liability for libel, slander or other torts;
- Deletes the provision that 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, F.S. (lost or abandoned property law);
- Removes the requirement that prosecutors had 60 days to commence prosecution of State Fire Marshal referrals or otherwise report reasons for lack of prosecution;
- Removes the provision establishing the Arson and Destructive Device Reward Program which provided rewards of up to \$25,000 for persons providing specified information;
- Provides that it is a violation of the certification for any career firefighter whose initial employment date is on or after July 1, 2008, to use tobacco products.

B. Amendments:

None.