

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 Community Affairs Committee

BILL: CS/CS/SB 2388

INTRODUCER: Community Affairs Committee; Banking and Insurance Committee; and Senator Saunders

SUBJECT: Fire Prevention and Control

DATE: April 17, 2008 REVISED: _____

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

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| 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:

The committee substitute for committee substitute for SB 2388 (the bill) revises the regulatory authority of the State Fire Marshal established in chapter 633, F.S, providing for Fire Prevention and Control. The Chief Financial Officer, serving as the State Fire Marshal, carries out the duties of fire prevention, protection and control through the Division of State Fire Marshal. The bill provides the following:

- Revises requirements for automatic sprinkler systems in transient public lodging establishments and nursing homes.
- Directs the department to establish uniform firesafety standards for tunnels.
- Authorizes the State Fire Marshal to accept applications for the nursing home loan guarantee program for a 1-year period.
- Revises minimum firesafety standards relating to the plans for, and inspections of, manufactured buildings.
- Clarifies that the State Fire Marshal may investigate the causes of fires and explosions when an investigation is deemed necessary.

- Establishes continuing education requirements for persons licensed to service, repair, recharge, test, mark, inspect, install, or hydrotest clean agent fire suppression equipment.
- Revises requirements for certification as a firesafety inspector and abolishes the classification of special state firesafety inspector, authorizes the State Fire Marshal to develop an advanced firesafety inspector training and certification program by rule, and provides for a reciprocity agreement with the Florida Building Code Administrators and Inspectors Board.
- Clarifies responsibilities of the State Fire Marshal with respect to the inspection of state-owned buildings.
- Provides specified immunity from civil liability in certain circumstances to persons who provide information relating to certain crimes to the State Fire Marshal.
- Expands and clarifies the powers and duties of law enforcement agents under the State Fire Marshal.
- Revises requirement for firefighter training and certification, and designates new firefighter classifications.
- Authorizes the State Fire Marshal to contact with qualified public entities or private companies to provide examinations.
- Authorizes the Division of State Fire Marshal to issue administrative cease and desist orders, and impose administrative fines against firefighter employers who violate laws relating to the Firefighters Occupational Safety and Health Act.
- Repeals certain annual reporting requirements by the State Fire Marshal relating to the status of the State Board of Education and the Board of Governors firesafety programs.

This bill substantially amends the following sections of the Florida Statutes: 218.23, 447.203, 553.895, 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, and 633.821.

The bill repeals subsection (8) of s. 1013.12, Florida Statutes.

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 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

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.

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 construction mine operations.

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 cross reference.

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

Section 4. 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 5. 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. A nursing home licensee must submit complete sprinkler construction documents to the Agency for Health Care Administration for review by December 31, 2008, and the licensee must have final agency approval by June 30, 2009, to begin construction. Exceptions are provided for nursing home licensees if the construction documents are contingent upon approval of an application for the loan guarantee program.

Section 6. Amends s. 633.0245, F.S., relating to the SFM Nursing Home Fire Protection Loan Guarantee Program (Program), to extend the June 2006 deadline for a qualified nursing home to apply for a limited loan guarantee for a fire protection system 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 7. Amends s. 633.025, F.S., relating to minimum firesafety standards, to allow manufactured buildings to be inspected at the point of manufacture if the person conducting the inspection is a certified firesafety inspector under s. 633.081, and the manufacturer's modular data plate stating that the building is in compliance with chapter 633 and the rules of the DFS, is affixed to the building. The DFS is authorized to adopt rules to administer these provisions.

Section 8. Amends s. 633.03, F.S., relating to investigations of fires, to expand the SFM's investigative authority to explosions. The bill clarifies that the fires and explosions will be investigated when the SFM deems necessary.

Section 9. 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 10. 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 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 building code inspectors, plan examiners, and certified firesafety inspectors.

Section 11. Amends s. 633.085, F.S., relating to inspections of state buildings and premises. 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 high-hazard state-owned or state-leased buildings annually.

Section 12. Amends s. 633.101, F.S., relating to SFM hearings, investigations, and investigatory powers. The bill clarifies the authority of the SFM as follows:

- The SFM may administer oaths and affirmations, compel 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.
- A person complying with a court order to testify or provide matter and who asserts a privilege against self-incrimination may not be subjected to criminal proceedings or civil penalties except in a 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 filing reports or 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 are not 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.
- 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 13. 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 14. 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 15. Amends s. 633.14, F.S., relating to agent powers of the SFM. The bill provides that SFM agents or 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 be certified in compliance with s. 943.1395, F.S., or meet the temporary employment requirements of s. 943.131, F.S., until certified.

Section 16. Amends s. 633.161, F.S., pertaining to violations and orders to cease and desist. The bill provides that a fire department not designated by a political subdivision as defined in s. 1.01, F.S., is subject to a cease and desist order issued by the SFM. 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 17. Amends s. 633.171, F.S., relating to penalties for violations, to clarify that persons violate the “chapter” and not the “law.”

Section 18. 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 19. Amends s. 633.18, F.S., relating to hearings and investigations. The bill clarifies that this section pertains to this chapter or SFM rules or orders.

Section 20. Amends s. 633.30, F.S., relating to SFM standards. The bill defines the terms: “career firefighter,” “employing agency,” “fire department,” “fire service apprentice,” “firefighter,” “firefighter I,” “firefighter II,” and “fireground resource technician”, and relocates the definitions for "council" and "division" for purposes of this chapter.

Section 21. Amends s. 633.34, F.S., relating to qualifications for employment as firefighters. The bill clarifies the requirements for persons applying to employing agencies to function as firefighters. Applicants must never have been adjudicated guilty of, or plead guilty or nolo contendere to any felony, any misdemeanor involving moral turpitude, or any misdemeanor for providing misleading or false statements relating to certification or employment as a firefighter.

Applicants are not eligible for certification for a period of 4 years after expiration of a sentence or final release from the Parole Commission. If the sentence is suspended or adjudication is withheld and probation is imposed, the applicant must have been released from probation. The 4-year restrictions does not apply to applicants who have received a full pardon or who have had their civil rights restored. 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 that require the knowledge and skills taught in training programs, regardless of their volunteer or employment status.

Section 22. Amends s. 633.35, F.S., pertaining to firefighter training and certification. The division is authorized to establish certification programs for firefighter training by rule, and to create certificates of compliance for certification as a fireground resource technician; a fire service apprentice; a Firefighter I; and a Firefighter II. For purposes of chapter 633, forestry compliance certification is equivalent to a Firefighter II.

Section 23. Amends s. 633.351, F.S., relating to disciplinary action. The bill specifies the circumstances 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 24. 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 as a 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 begins 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 25. Amends s. 633.382, F.S., relating to supplemental compensation for firefighters, to correct cross-references, and clarify qualifications for supplemental compensation.

Section 26. 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 27. Amends s. 633.541, F.S., relating to contracting, to clarify the prohibition applicable to non-certified fire protection contractors, and 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 28. Amends s. 633.72, F.S., relating to the Florida Fire Code Advisory Council, to expand the terms served by council appointees from one term to two consecutive 4-year terms.

Section 29. Amends s. 633.811, F.S., pertaining to firefighter employer penalties. The bill creates an administrative fine to be assessed against 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 30. Amends s. 633.821, F.S., relating to workplace safety, to remove outdated references.

Section 31. Repeals subsection (8) of s. 1013.12, F.S., relating to annual reports submitted by the State Fire Marshal on the firesafety programs of the State Board of Education and the Board of Governors.

Section 32. 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 the Community Affairs Committee on April 17, 2008:

The CS removes provisions of the bill that transferred the State Fire Marshal's responsibilities for firesafety inspections of educational facilities from chapter 1013 to chapter 633, and provides that a forestry compliance certification is equivalent to a Firefighter II classification. Subsection (8) of s. 1013.12, F.S., is repealed.

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;
- Conforms 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.