

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Banking and Insurance Committee

BILL: SB 108

SPONSOR: Senator Constantine

SUBJECT: Fire Prevention and Control

DATE: February 4, 2005

REVISED: 2/9/2005

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/1 amendment</u>
2.	<u></u>	<u></u>	<u>CJ</u>	<u></u>
3.	<u></u>	<u></u>	<u>GA</u>	<u></u>
4.	<u></u>	<u></u>	<u></u>	<u></u>
5.	<u></u>	<u></u>	<u></u>	<u></u>
6.	<u></u>	<u></u>	<u></u>	<u></u>

Please see last section for Summary of Amendments

Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

Senate Bill 108 strengthens the regulation of indoor pyrotechnic displays by making it a third-degree felony for persons to initiate pyrotechnic displays in an indoor facility without (1) a fire protection system, or (2) without written consent of the owner or operator of the facility and without obtaining a permit issued by the local authority having jurisdiction to issue the permit. An exception is provided for the manufacture, distribution, wholesale or retail sale, or seasonal sale of products, e.g., fireworks and sparklers, regulated under ch. 791, F.S., so long as such products are not used in an indoor facility.

The bill creates a Fire and Emergency Incident Information Reporting Program (FEIIRP) within the Division of State Marshal (SFM) in the Department of Financial Services (DFS). The FEIIRP codifies the current reporting system within the SFM which is called the Florida Fire Incident Reporting System (FFIRS). The program is designed to collect fire and emergency incident information on a voluntary basis and allow this data to be shared among fire protection agencies. The bill provides powers and duties of the program, and provides authority for the SFM to adopt rules to implement and administer the program. The bill creates a Fire and Emergency Incident Information System Technical Advisory Panel to advise, review, and make recommendations to the SFM regarding the reporting program. The SFM must consult with the Division of Forestry within the Department of Agriculture and Consumer Services and the Bureau of Emergency

Medical Services in the Department of Health to coordinate data, ensure its accuracy, and limit duplication of efforts in data collection, analysis, and reporting.

The State Fire Marshal is required to adopt rules for live fire training for firefighters, and requires fire training instructors be certified on and after January 1, 2006. These rules will be based upon national fire standards for live fire training.

Finally, the bill requires that proceeds from property seized under the Florida Contraband Forfeiture Act by the SFM be deposited into the Insurance Regulatory Trust Fund to be used for arson suppression, arson investigation, and funding anti-arson rewards. Currently, such proceeds are required to be deposited in the State's General Revenue Fund.

This bill substantially amends ss. 633.171, 633.821, and 932.7055 of the Florida Statutes.

The bill creates s. 633.15, F.S., of the Florida Statutes.

II. Present Situation:

The West Warwick, Rhode Island Nightclub Inferno

On February 20, 2003, a pyrotechnics display went terribly awry during a concert at a nightclub in West Warwick, Rhode Island. Fireworks set off during a performance by a rock group ignited flammable soundproofing foam that had been installed inside the venue. In less than 3 minutes the building was engulfed in flames and filled with a poisonous cloud of thick black smoke. The nightclub did not have a fire-sprinkler system, the fire-extinguisher nearest to where the blaze started was missing, and fire-inspectors failed to cite the club for placing flammable foam (which one forensics expert estimated contained the firepower of 13 gallons of gasoline) throughout the inside of the structure. The doors of the nightclub violated the fire code, but the club circumvented the law by removing the doors during inspection and then putting them back up. The fire claimed the lives of 100 people that night and injured 200 more.

In response to the Rhode Island tragedy, a number of states revised their fire prevention laws in efforts to make the occurrence of a similar incident less likely. Rhode Island passed stringent new fire-prevention requirements that include mandating sprinklers in almost all public buildings that hold 50 or more persons. Rhode Island also banned the indoor use of pyrotechnics in almost all venues holding under 1,000 people and made violation of the state's permit requirements a felony offense. Other states also toughened their requirements for indoor pyrotechnic displays. For example, New York now requires a permit from a local permitting authority for the use of indoor pyrotechnics, a specified number of fire extinguishing devices on hand, and sets penalties for non-compliance ranging from a class A misdemeanor for a first offense to a class E felony for subsequent offenses.

The Florida Fire Prevention Code

Chapter 633, F.S., contains Florida's laws relating to fire prevention and control. The chapter designates the Chief Financial Officer as the State Fire Marshal¹ and contains various fire

¹ The Division of State Fire Marshal (SFM) is located within the Department of Financial Services.

prevention standards and procedures. Section 633.0215, F.S., requires the State Fire Marshal (SFM) to adopt, by rule, the Florida Fire Prevention Code (Code), which contains Florida's fire safety laws pertaining to public and private buildings. The Code incorporates the most recent editions of the National Fire Prevention Association (NFPA) Standard 1 and the Life Safety Code, Pamphlet 101. These provisions in the rule contain standards for use of pyrotechnics "proximate" to the audience – or in front of or in an enclosed area, such as a building. (The FFPC incorporates NFPA Publication 1126, 2001 edition, *Standard for the Use of Pyrotechnics before a Proximate Audience*.)

To use such pyrotechnics, the rule requires that persons must obtain a permit from the state or local fire marshal. The application must describe in detail the types of pyrotechnics to be used and the venue where the display shall occur.² Permit requirements vary with each location, but the authority having jurisdiction must exercise sound judgment regarding the safety of the production and the qualifications of the pyrotechnic operator.³ The local fire official is required to travel to the venue to conduct a walk-through and observe a demonstration of the pyrotechnics (though this requirement can be waived by the local jurisdiction under certain circumstances).⁴

The Florida Fire Prevention Code also contains the requirements for fire protection systems such as sprinklers. Generally, sprinklers must be installed in any place of assembly with a seating capacity of 300 or more for new buildings and in all existing buildings that have over 15,000 square feet of space suitable for displays or exhibitions. Sprinklers must be installed in accordance with NFPA Standard 13, which describes how such systems must be installed, the maximum size, source of water supplies, the placement of the sprinkler heads, and similar items.

The penalty for using pyrotechnics without obtaining a permit is a second degree misdemeanor under s. 633.171(1), F.S.

Currently, the SFM has established the Florida Fire Incident Reporting System (FFIRS) by agreement among fire and emergency agencies which is designed to collect fire and emergency incident information and allow this information to be electronically shared among such agencies. According to representatives with the SFM, participation in this program is voluntary and approximately 65 percent of the state's fire protection agencies participate. The bill would codify this program in statute.

Firefighter Training Programs

Section 633.35, F.S., requires the SFM to establish a firefighter training program to provide basic employment training for firefighters. The SFM approves (through certification) agencies and institutions to provide the training. Currently, there are 28 such agencies or institutions (community colleges, vocational/technical schools, or agencies of larger counties) throughout the state. To be employed as a firefighter by the state or any local government in the state, with limited exceptions, the firefighter must obtain a certificate from the SFM.

² Florida Fire Prevention Codes 4-1 through 4-5.2.

³ Florida Fire Prevention Code 4-1.1

⁴ Florida Fire Prevention Code 4-4.1

The SFM also certifies instructors who teach in these agencies and institutions. However, there is no specific authority in law for the SFM to adopt rules to provide a certification program for “live fire training” instructors.

In response to recent deaths involving live fire training over the past 2 years, the SFM has requested authority to adopt rules to provide a certification program for instructors in live fire training.

Disposition of Liens and Forfeited Property

Section 932.7055, F.S., provides for the disposition of property seized by state agencies and agencies of local government. When a seizing agency obtains a final judgment granting forfeiture of real property or personal property, it may:

- Retain the property for the agency’s use;
- Sell the property at public auction or by sealed bid to the highest bidder, except for real property which should be sold in a commercially reasonable manner after appraisal by listing on the market; or
- Salvage, trade, or transfer the property to any public or nonprofit organization.

If the forfeited property is subject to a lien, the agency is required to sell the property with the proceeds first being used towards satisfaction of any liens. The seizing agency must use the remaining proceeds to pay any related storage, maintenance, security, cost, and then any court costs incurred in the forfeiture proceeding.

If the seizing agency is a county or municipal agency, the remaining proceeds must be used for school resource officer, crime prevention, safe neighborhood, drug abuse education and prevention programs, or for other law enforcement purposes, which include defraying the cost of protracted or complex investigations, providing additional equipment or expertise, and providing matching funds to obtain federal grants. The proceeds and interest may not be used to meet normal operating expenses of the law enforcement agency.

If the seizing agency is a state agency, all remaining proceeds are deposited into the State’s General Revenue Fund. However, subsection (5) authorizes eleven specific agencies to retain remaining proceeds to be used for various authorized agency uses.

III. Effect of Proposed Changes:

Section 1. Creates s. 633.115, F.S., which establishes a Fire and Emergency Incident Information Reporting Program within the Division of State Fire Marshal (SFM) in the Department of Financial Services. The reporting program establishes and maintains an electronic communication system capable of transmitting fire and emergency incident information to and between fire protection agencies. The program also initiates a fire and emergency incident reporting system that receives fire and emergency incident data from fire protection agencies and prepares and disseminates annual reports to the Governor, Legislature, fire protection agencies, and, upon request, to the public. These reports include information listed in the National Fire Incident Reporting System. The program also, upon request, provides other states and federal agencies with fire and emergency incident data.

The bill requires the “program” to adopt rules to implement, administer, manage, maintain, and utilize the Fire and Emergency Incident Information Program and to establish procedures and a format for each fire protection agency to voluntarily monitor its records and submit reports to the program. The rules are to be minimum requirements and do not preclude a fire protection agency from implementing its own requirements that must not be in conflict with the rules of the SFM. The program also establishes an electronic information database, which is accessible and searchable by fire protection agencies.

The SFM must consult with the Division of Forestry within the Department of Agriculture and Consumer Services and the Bureau of Emergency Medical Services in the Department of Health to coordinate data, ensure its accuracy, and limit duplication of efforts in data collection, analysis, and reporting.

A Fire and Emergency Incident Information System Technical Advisory Panel is created within the SFM to advise, review, and make recommendations to the SFM regarding the requirements of s. 633.115, F.S. The panel consists of 15 members: the current 13 members of the Firefighters Employment, Standards, and Training Council (established under s. 633.31, F.S.); a member from the Division of Forestry appointed by the division director; and a member from the Bureau of Emergency Medical Services, appointed by the bureau chief.

The term “fire protection agency” must be defined by rule of the SFM.

Section 2. The bill adds subsection (3) to s. 633.171, F.S., to make it a third-degree felony for a person to initiate a “pyrotechnic display” in an indoor facility that does not have a fire protection system installed according to the Florida Fire Prevention Code and National Fire Protection Assn. Standard 13. Also, the bill makes it a third-degree felony⁵ for a person to initiate a pyrotechnic display in an indoor facility without the written consent of the owner or operator of the facility and without a permit issued by the local authority having jurisdiction to issue the permit. However, the bill does not contain any provision authorizing a permitting process by a local government authority, or who must secure a permit, or how often a permit must be secured. These requirements do not apply to the manufacture, distribution, or sale at wholesale or retail, or seasonal sale of products (sparklers and fireworks) regulated under ch. 791 F.S., if the products are not used in an indoor facility.

The bill also clarifies the penalty provisions under s. 633.171, F.S., to be applicable to “a person” and makes other technical changes to subsections (1) and (2).

Section 3. Amends s. 633.821, F.S., to authorize the adoption by the SFM of the latest edition of the National Fire Protection Association publication relating to standards for safe working conditions for firefighter employees. The bill requires the SFM to adopt rules for live fire training for firefighters and for a 40-hour certification program for live fire training instructors. This provision also requires the SFM to use specified nationally adopted standards in developing such training. Each live-fire-training instructor must be certified and all live fire training commenced after January 1, 2007, must be conducted by a certified live fire training instructor.

⁵ A third-degree felony carries with it the possibility of up to 5 years imprisonment and up to a \$5,000 fine.

In addition, this provision clarifies that this new requirement does not apply to wild land training credentialed by the National Wildfire Coordinating Group through the Florida Division of Forestry.

Section 4. Amends s. 932.7055(6), F.S., to require that proceeds from property seized under the Florida Contraband Forfeiture Act by the Division of the State Fire Marshal in the Department of Financial Services, shall be deposited into the Insurance Regulatory Trust Fund to be used for arson suppression, arson investigation, and funding anti-arson rewards.

Section 5. Provides that the bill will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons who own facilities where pyrotechnic displays will be presented will have to pay for the installation of proper fire protection systems pursuant to a national fire code and obtain a local government permit. Such costs could be passed on to the organizations which perform the pyrotechnic displays or to persons attending such events.

C. Government Sector Impact:

Section 1 codifies an existing program within the Division of State Fire Marshal (Fire Incident Reporting System); therefore it should not require any additional expenditure by DFS.

Section 3 requires the Division of the State Fire Marshal to adopt rules for live fire training for firefighters, and requires fire training instructors be certified on and after January 1, 2007. The division estimates that each institution will require 1 or 2 certified instructors, for a total of approximately 100 statewide. The division states that they will

provide the training free of charge to these institutions and the department can absorb the costs of providing this certification program in their current budget.

Local jurisdictions which do not have a pyrotechnic permitting system will have to absorb the costs of establishing such a system as well as conducting inspections of indoor facilities to insure that a proper fire protection system is installed according to the codes and standards mandated under the bill.

The Criminal Justice Impact Conference has not yet reviewed the felony provisions of the bill to determine if these provisions have a prison bed impact.

Section 4 of the bill requires that proceeds from property seized by the Division of the State Fire Marshal be deposited in the Insurance Regulatory Trust Fund to be used for arson suppression, arson investigation, and funding anti-arson rewards. Currently, such proceeds are deposited in the State's General Revenue Fund. Representatives with the Division of the State Fire Marshall estimate that the agency could receive up to \$150,000 a year in forfeited proceeds which would be deposited into the Insurance Regulatory Trust Fund. This estimate is based on an average of one car forfeited per year within each of the Division's seven regions. The impact of diverting these proceeds from the General Revenue (GR) Fund would be to reduce the distribution to the GR Fund and allow for a statutory, as opposed to a legislative, appropriation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The terms "pyrotechnic display" and "indoor facility" relating to the criminal penalty provisions in Section 2 of the bill are not defined in the bill or in statute. These terms appear to be vague and ambiguous and might implicate the rule of lenity which means that an "ambiguous criminal statute is to be construed in favor of the accused."

VIII. Summary of Amendments:

Barcode 413572 by Banking and Insurance

This amendment clarifies an exemption in the bill pertaining to training by the State Fire Marshal by adding prescribed live-fire-training exercises sanctioned by the Division of Forestry within the Department of Agriculture and Consumer Services or the National Wildfire Coordinating Group.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
