

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 69 Fire Prevention and Control
SPONSOR(S): Quinones; Berfield
TIED BILLS: none **IDEN./SIM. BILLS:** SB 108

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Committee	19 Y, 0 N	Tinney	Cooper
2) Criminal Justice Committee		Bond	Kramer
3) State Administration Appropriations Committee			
4) Commerce Council			
5) _____			

SUMMARY ANALYSIS

This bill creates a Fire and Emergency Incident Information Reporting Program within the Division of State Fire Marshal in the Department of Financial Services. The bill also creates a Fire and Emergency Incident Information System Technical Advisory Panel and provides for the membership and duties of the panel.

This bill creates a third-degree felony offense of initiating a pyrotechnic display in an indoor facility unless the facility has a fire protection system. Written consent of the owner or operator of the facility, and a local permit, are also required.

This bill requires 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, 2006.

Under current law, the proceeds of contraband seized by the State Fire Marshal is deposited into the General Revenue Fund, this bill provides that such proceeds are deposited into the Insurance Regulatory Trust Fund.

This bill transfers an estimated \$150,000 annually from General Revenue Fund to the Insurance Regulatory Trust Fund. This bill is expected to have a minimal negative fiscal impact on local governments.

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:

Provide limited government -- This bill creates a program, creates an advisory panel, creates a criminal offense, and increases regulation of local government fire departments.

Promote personal responsibility -- This bill deters wrongful conduct by creating a new criminal offense for such conduct.

B. EFFECT OF PROPOSED CHANGES:

Background

The Division of State Fire Marshal is located within the Department of Financial Services (DFS). The Florida Fire Incident Reporting System (FFIRS) is located within the Division of State Fire Marshal. FIRRIS was created by rule. This program is designed to collect fire and emergency incident information and allow this information to be electronically shared between fire protection agencies. According to the Division of State Fire Marshal, participation in this program is voluntary and about 65% of Florida's fire protection agencies currently participate.

The State Fire Marshal has adopted, by rule, a number of provisions of the National Fire Protection Code as part of the Florida Fire Protection Code.¹ One provision adopted is Publication 1126, 2001 edition, *Standard for the Use of Pyrotechnics before a Proximate Audience*. A pyrotechnic device is a device containing pyrotechnic materials and capable of producing a special effect. A pyrotechnic material is a chemical mixture used in the entertainment industry to produce visible or audible effects by combustion, deflagration, or detonation. Such a chemical mixture consists predominantly of solids capable of producing a controlled, self-sustaining, and self-contained exothermic chemical reaction that results in heat, gas, sound, light, or a combination of these effects. The chemical reaction functions without external oxygen. A pyrotechnic display is a special effect created through the use of pyrotechnic materials and devices. Local jurisdictions, by ordinance, may require a permit for the use of pyrotechnics.

If, upon investigation, the State Fire Marshal determines that a person is violating the Florida Fire Prevention Code, the State Fire Marshal may order the building evacuated until the violation is cured. A refusal to obey the evacuation order is a misdemeanor.² Thus, under current law the only penalty for violating the rules regulating the proper setup and use of a pyrotechnic display is a misdemeanor, and that can only be charged if the display is discovered and an evacuation order is disobeyed.

On February 20, 2003, a pyrotechnics display went terribly awry during a concert at *The Station* nightclub in West Warwick, Rhode Island. Fireworks set off during a performance by the rock group *Great White* ignited flammable soundproofing foam in the building. In less than 3 minutes, flames and a poisonous cloud of thick black smoke engulfed the building. 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, over 200 more people were injured.

¹ Fla.Admin.Code 69A-60.005.

² Section 633.161, F.S.

On July 30, 2002, Lt. John Mickel and Firefighter Dallas Begg of the Osceola County Fire Department died of thermal burns and smoke inhalation while participating in a live-fire training exercise at the old Florida Bible College in Kissimmee. Lt. Mickel was an 11-year veteran, while Firefighter Begg had only been with the department for 6 months. The firefighters were the lead crew in the training exercise when a flashover occurred killing both of them.

Under s. 932.7055(6), F.S., if a state agency seizes property under the Florida Contraband Forfeiture Act, the proceeds are deposited into the General Revenue Fund, except that the proceeds are directed to one of 12 trust funds under certain circumstances.

Effect of Bill

This bill creates s. 633.115, F.S., the Fire and Emergency Incident Information Reporting Program (FEIIRP) within the Division of State Fire Marshal, Department of Financial Services. This statute will codify the Florida Fire Incident Reporting System (FFIRS) into law as FEIIRP. The Division of State Fire Marshal manages the current incident reporting program in conjunction with the National Fire Incident Reporting System. This program will maintain an electronic communication system capable of transmitting fire and emergency incident information to and between fire protection agencies. This program will furnish annual reports to the Governor, Legislature, and fire protection agencies, and upon request, to the public. The bill also creates a technical advisory panel for the FFIRS. Participation by local government remains voluntary.

This bill amends s. 633.171, F.S., to create felony offenses related to indoor pyrotechnic displays. It is a third degree felony to initiate an indoor pyrotechnic display without a statutorily compliant fire suppression system. It is also a third degree felony to initiate an indoor pyrotechnic display without the written permission from the owner or operator of the facility or a local permit. These felonies do not apply to products regulated under chapter 791, F.S., such as seasonal sparklers and fireworks, unless they will be used within an indoor facility.

This bill amends s. 633.821, F.S., to provide the Division of State Fire Marshal with authority to adopt rules for the purposes of protecting firefighters during live-fire training exercises. It requires that these safety rules be modeled upon safety and training standards recommended in National Fire Protection Association, Publication 1403. It also requires a training program and instructor certification process to be instituted for live-fire training after a specified date. This bill does not apply to wildland training credentialed through the National Wildfire Coordinating Group by the Division of Forestry of the Department of Agriculture and Consumer Services.

This bill amends s. 932.7055, F.S., part of the Contraband Forfeiture Act, to provide that proceeds of any seizure made by the State Fire Marshall are deposited into the Insurance Regulatory Trust Fund instead of the General Revenue Fund. Seized funds are then supposed to be used for the purposes of arson suppression, arson investigation, and funding of anti-arson rewards.

This bill has an effective date of upon becoming law.

C. SECTION DIRECTORY:

Section 1: Creates s. 633.115, F.S., relating to the Florida Fire and Emergency Incident Information Reporting Program.

Section 2: Amends s. 633.171, F.S., relating to criminal penalties.

Section 3: Amends s. 633.821, F.S., relating to fire training activities.

Section 4: Amends s. 932.7055, F.S., relating to the disposition of proceeds seized by the Division of State Fire Marshal under the Florida Contraband Forfeiture Act.

Section 5: Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The transfer of forfeitures is estimated to result in a recurring reduction in General Revenue of \$150,000, and a recurring increase in the Insurance Regulatory Trust Fund of a like amount.

2. Expenditures:

Unknown, but likely minimal. See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Unknown, but likely minimal. See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None. Although the bill requires a permit to initiate an indoor pyrotechnics display, this may only apply where the local government already has a permit process in place.

D. FISCAL COMMENTS:

There is no estimated cost to the parts of this bill creating the Emergency Incident Information System because this codifies an existing program.

There may be a minimal cost increase related to increased regulation of live fire exercises. Fire departments will need to have their live-fire training instructors properly certified, and must ensure that their live-fire training complies with the new guidelines. However, these standards are good practice, and an agency or local government that is not already complying with them will likely see an offsetting reduction in worker's compensation costs that may offset the additional administrative and training costs.

The 2004 Criminal Justice Estimating Conference determined that the 2004 version of this bill (this bill has the same provisions) had an insignificant prison bed impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

It is possible that the portion of this bill relating to increased regulation of live fire exercises could be construed as a mandate. However, the estimated cost appears to be well below the threshold of the

insignificant fiscal impact exception. Accordingly, the mandates provision does not appear to be implicated.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Division of State Fire Marshall to promulgate rules to implement the Fire and Emergency Incident Information Reporting Program. The bill provides rule-making authority to the Division of State Fire Marshal to define the term "fire protection agency." The bill authorizes the Division of State Fire Marshall to adopt rules for live-fire training throughout the state and for the certification process for live-fire training instructors. The bill appears to give sufficient rule making authority that is appropriately limited.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Regarding Criminal Penalties for Indoor Pyrotechnics

The term "fire suppression system" is not defined in the bill or in statute.

The term "pyrotechnic display" is not defined in the bill or in statute. It is possible that it could encompass a number of activities that would not be considered dangerous enough to convict an individual of a felony offense. For instance, a cap gun used in a theatre production uses a very small pyrotechnic charge.

This bill has an effective date of upon becoming law. Laws creating a new criminal offense are typically given a specific effective date in order to inform the public on the law.

Where a criminal law proscribes specific conduct, the state cannot prosecute the offender for a more broadly defined offense that has a greater penalty. For instance, the courts dismissed felony charges of official misconduct and grand theft filed against a public official who submitted numerous fraudulent claims for travel reimbursement because there is a misdemeanor offense for fraudulent travel claims. *State v. Maloy*, 523 So.2d 815 (Fla. 1st DCA, 2002). Thus, where an act of using pyrotechnics indoors results in the death of a person, and manslaughter could be charged under current law, it is possible that this bill could have the effect of reducing the potential criminal penalty from a second degree felony to a third degree felony. Manslaughter, a second degree felony, is "[t]he killing of a human being by the act, procurement, or culpable negligence of another without lawful justification" It could be argued that a pyrotechnics death resulting from culpable negligence would have to be prosecuted under this newly created criminal offense rather than under the manslaughter law.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.