

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 1606

INTRODUCER: Banking and Insurance Committee and Senators Aronberg and Smith

SUBJECT: Fire Prevention and Control

DATE: April 1, 2009 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Messer	Burgess	BI	Fav/CS
2.			CA	
3.			CJ	
4.			JA	
5.			WPSC	
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:

This bill revises the regulatory authority of the State Fire Marshal established in ch. 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 certain transient public lodging establishments and timeshare units.
- Revises minimum fire safety 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 install and maintain fire suppression equipment.
- Revises requirements for certification as a fire safety inspector and abolishes the classification of special state fire safety inspector, authorizes the State Fire Marshal to develop an advanced fire safety 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 fire/destruction related 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 contract with qualified public entities or private companies to provide examinations; this authorization is a codification of current practice.
- Imposes additional application procedures on firefighter applicants who pass the examination but do not meet other licensure qualifications within a prescribed period of time.
- 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.

This bill substantially amends the following sections of the Florida Statutes:

218.23, 447.203, 553.895, 633.02, 633.0215, 633.025, 633.026, 633.03, 633.061, 633.071, 633.081, 633.082, 633.085, 633.121, 633.13, 633.14, 633.161, 633.171, 633.175, 633.18, 633.30, 633.34, 633.34, 633.35, 633.351, 633.352, 633.382, 633.521, 633.524, 633.537, 633.541, 633.72, 633.811, and 633.821.

II. Present Situation:

Pursuant to ch. 633, F.S., the Chief Financial Officer (CFO) is designated as the State Fire Marshal 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 4,200 requests for investigation, of which 2,136 were determined to be incendiary.² Bureau agents made 644 arrests on active cases, and of those arrests, 83 percent resulted in convictions. In the current fiscal year, the Florida State Fire College has already trained 4823 firefighters, administered 5825 exams,

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.

² Report from the Division of the State Fire Marshal, submitted to the Senate Banking and Insurance Committee on March 12, 2009.

and received above satisfactory ratings by 94 percent of supervisors of firefighters receiving FSFC training. 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. Currently, some licensing examinations are outsourced to private vendors; however, the Division does not appear to have statutory authority to do so.

III. **Effect of Proposed Changes:**

Section 1: Amends 218.23 F.S., to require “career firefighter” be employed with a unit of local government in order for that unit to receive certain funds through revenue sharing in ch. 218 F.S. This requirement differs from the current version of that statute which omits the word “career.”

Section 2: Clarifies that fire fighters as defined in Chapter 633.30, may be determined by the Public Employees Relations Commission to be managerial employees as defined in Chapter 447.203.

Section 3: Amends Chapter 553.895 by deleting the reference to the 1985 edition of NFPA 13 and relying on the edition adopted by the Department; it deletes the reference to the 1984 edition of NFPA 72 also in reliance on the edition adopted by the Department.

Section 4: Provides clarification that the language references the State Fire Marshal and no other fire marshal within the state.

Section 5: Clarifies the definition of a Contractor IV to include a contractor who deals with the installation of NFPA 13D fire sprinkler systems; clarifies the definition of a “pre-engineered system” as a fire-suppression system but does not include the ventilation or other equipment in which the system is installed.

Section 6: Provides for the issuance of an expedited declaratory statement by the department in order to interpret the provisions of the Florida Fire Prevention Code; lays out guidelines for releasing such declaratory statements when such request meets specific criteria that may cause a delay in the permitting or the construction of a building or project.

Section 7: Provides for plans review and inspection of manufactured buildings to occur at the factory provided that the inspector meets the same certifications required within this state; permits the installation of the manufacturers data plate at the factory; requires the local fire official to accept the approval when moved within their jurisdiction subject only to site conditions, system performance testing and compliance with any local amendments that apply.

Section 8: Clarifies the informal interpretation process to include the establishment of a Fire Code Interpretation Committee; establishes the legislative intent to provide consistent interpretation of the Code; establishes the criteria for the Fire Code Interpretation Committee who shall review any request including the minimum qualifications for membership on the committee; provides that such member must be selected for committee membership at least 30 days before engaging in activity rendering a decision; requires that decisions on non-binding

request be rendered within 10 business days of receipt; permit the waiver of the time limits with the consent of the parties; provides that no decision rendered is binding on the State Fire Marshal; establishes the fee for each request; permits the fees to be paid to a contractor; provides for the appeal of an interpretation to the Division.

Section 9: Clarifies the Division's investigative authority to include explosions when deemed necessary by the Division.

Section 10: Clarifies that continuing educational credits for license to install or maintain fire suppression equipment shall be required at the time of renewal in the amount of 16 hours; removes restrictions on an applicant's ability to retake a failed exam; creates additional licensure procedures for an applicant who passes the examination but does not meet the remaining licensure qualifications within 1 year of the application date.

Section 11: Provides rulemaking authority to the Division to adopt rules for the attachment and placement of fire protection system inspection tags.

Section 12: Provides an exception in the duties of firesafety inspectors for the inspection of fire hydrants by public entities when not engaged in the business of contracting; abolishes the certification class of "Special Fire Safety Inspector" and provides for existing persons within the class to achieve full certification through a challenge of the examination; provides for the development of a certification program for fire safety inspectors with management responsibility; requires the program to be consistent with national standards prescribing minimum levels of training, education and experience; mandates reciprocity agreements between the Division and the Florida Building Code Administrators and Inspectors Board for joint recognition of continuing education.

Section 13: Clarifies that fire alarm systems shall comply with the standards adopted by the Division; mandates that the Division adopt certain fire alarm standards of the National Fire Protection Association; clarifies that employees of local governmental units including special districts may perform inspections on fire hydrants under their control without being licensed as a fire protection contractor, however, private contractors must be licensed; provides that fire hydrants that are part of a fire protection system be maintained in accordance with nationally recognized standards; requires that fire sprinkler heads that are subject to a recall must be removed from service and replaced by the owner of the building.

Section 14: Clarifies the definition of buildings that are state-owned and subject to the jurisdiction of the Division for fire code enforcement; removes the mandate that the Division conduct certain fire performance test however, the authority to do so when deemed necessary is preserved; requires the Division to ensure that fire drills are conducted in high hazard state-owned buildings.

Section 15: Extends the authority for enforcement of all laws and rules of the Division to law enforcement officers when requested by chiefs of fire departments.

Section 16: Clarifies that agents of the Division may exercise any authority under this chapter in conjunction with other state and local officials charged with similar responsibilities; and clarifies that it is illegal to resist arrest by the Division's law enforcement personnel.

Section 17: Clarifies that agents of the Division must be certified; provides that it is unlawful for any person to resist an arrest by an agent of the Division.

Section 18: Clarifies the penalty for violation of orders issued by the Department; includes the prohibitions of persons representing themselves as operating a fire department as a violation of this chapter.

Section 19: Clarifies that penalties are based on this Chapter rather the law implementing the section or Chapter.

Section 20: Expands mandatory information sharing and mandatory reporting to included losses from explosions.

Section 21: Clarifies issues involving hearings, investigations, subpoena of witnesses for violation of any rule or order of the Division; expands section to include investigations under ch. 552 and ch. 554 F.S.

Section 22: In response to a comment by the Joint Administrative Procedures Committee (JAPC), the term fire fighter is specific to a "full time professional firefighter." It was noted by JAPC that by this definition volunteer firefighters were excluded. In addition, "full time professional" was never defined. This change corrects this situation; the existing definition of "firefighter" has been changed to make the term generic to any level of certification. Additional definitions of career firefighter, firefighter I and firefighter II have been inserted to clearly define specific certification levels while maintaining the original statutory intent that a "full time professional firefighter" must be a firefighter II.

Section 23: Clarifies which specific criminal charges would prevent the certification or employment of a fire fighter; requires applicants for firefighter positions must pay for and submit fingerprints as directed by the division; provides that the Department has rulemaking authority to create medical requirements for training and certification of firefighters; clarifies that unless certified, an individual or individuals cannot respond to or operate at fires or hazardous material scene and they cannot perform incident command functions.

Section 24: Establishes certifications for Fire Ground Resource Technician, Apprentice Firefighter, Firefighter I, and Firefighter II; clarifies the current requirement that a person employed to be a firefighter be trained and certified before being used in dangerous situations or work environments without proper training; clarifies that a person can be employed without certification and required training however, they must receive certification within one year of employment; clarifies that a person employed as a career firefighter, who has been with the employing agency in a volunteer or other such capacity, may function at that original capacity while undergoing the required training for career certification; clarifies existing language that permits a special certificate for an individual who has received training as a firefighter from out of state prior to gaining the regular state certification; requires that an applicant who fails the

examination under this section, and does not pass the examination within 6 months of the failed examination, retake the applicable training program; clarifies the rights of certified forestry firefighters.

Section 25: Expands the current language for revocation of fire fighter certification to include any misdemeanor involving moral turpitude, or misleading or false statements relating to the certification or employment as a firefighter.

Section 26: Requires that a fire fighter that has not been active with an organized fire department for the past 3 years retake and pass the written and practical examinations; the requirement does not apply to certified fire fighters employed as fire safety inspectors or to instructors.

Section 27: Clarifies the definition of “firefighter;” requires that in order to receive supplemental compensation for educational degrees, the college or university must be accredited.

Section 28: Imposes additional application procedures on applicants who pass the examination but do not meet the remaining licensure qualifications within one year of the application date; clarifies the minimum requirements for qualifying to take an examination for Contractor I, Contractor II or Contractor III to include 4 years proven experience in the respective area and be of good moral character; provides that a plumbing contractor meets the equivalent experience requirements upon completion of not less than 40 contact hours of instruction on NFPA 13D; further that a contractor I, II, III or IV must have training on the installation and layout of fire suppression systems; provides that the Division may develop equivalent training programs to the required NICET subfield of Inspection and Testing of Fire Protection Systems Level II.

Section 29: Provides statutory authority for the Division’s current practice of entering into contracts with outside vendors for the administration of examinations; currently the Division does not have this authority.

Section 30: Provides that fire protection contractors must meet the continuing education required to maintain NICET subfield Level II certification or an equivalent program determined by the Division plus 8 additional hours of continuing education as approved by the Division.

Section 31: Provides that the owner of a one or two family dwelling may inspect and maintain a fire protection system within their own home.

Section 32: Increases the time allowed for members of the Fire Code Advisory Council to serve from one 4 year term to two consecutive 4 year terms.

Section 33: Clarifies the penalties for violations of the Firefighter Occupational Safety and Health Act; authorizes the Bureau to issue administrative cease and desist orders; permits the assessment of administrative fines of not less than \$100 and not more than \$5,000 for each violation and each day of each violation.

Section 34: Provides an update to the work place safety requirements under the Code of Federal Regulation; deletes obsolete completion dates for implementing the work place safety requirements.

Section 35: Provides for an effective date of July 1, 2009, except as otherwise provided.

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:

This bill requires applicants for employment as a firefighter to pay certain costs associated with fingerprinting, training, and additional education.

C. Government Sector Impact:

Portions of the Bill mandate specific training requirements for individuals employed as fire fighters and fire inspectors; there may be a fiscal impact associated with this, however the amount is undeterminable at this time.

VI. Technical Deficiencies:

Lines 183-185 and 190-191 refer to the “current editions” of fire sprinkler standards and the NFPA adopted by the Division. A statute that incorporates a document by reference only incorporates the materials as they exist on the date the statute is enacted, unless a contrary legislative intent is expressed. It is not clear whether “current editions” is intended to incorporate only the now-existing versions of those documents, or if it is intended to incorporate all future editions. Additional language may be needed to clarify.

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, 2009:

The substantive changes between the CS and the original bill include: the removal of the provision in the original bill that relieved the State Fire Marshal of the reporting requirements in ch. 1013, F.S.; the imposition of additional application procedures on applicants who are not qualified to become certified within one year of passing the exam required by the State Fire Marshal; the removal of the provision in the original bill that permitted the State Fire Marshal to allow direct payment from applicants to contracted third party exam administrators; the addition of the phrase “except as otherwise expressly provided” before the effective date of the CS in order to accommodate specific provisions of the CS that have separate effective dates.

- B. **Amendments:**

None.