

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 883 Fire Safety and Prevention

**SPONSOR(S):** Government Operations Appropriations Subcommittee; Insurance & Banking Subcommittee; Boyd

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1410

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	11 Y, 0 N, As CS	Vanlandingham	Cooper
2) Government Operations Appropriations Subcommittee	10 Y, 0 N, As CS	Keith	Topp
3) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

An internal regulatory review by Florida's Division of the State Fire Marshal (SFM), located within the Department of Financial Services (DFS), has determined that numerous provisions of the statutes currently governing SFM and its regulatory authority are redundant, obsolete, difficult to administer, or complicated for the agency or public to interpret. DFS has put forward this proposal to rewrite and reorganize chapter 633, F.S.

In addition to deleting numerous provisions that are outdated or redundant, the bill makes several substantive policy changes. Most significant among these are more stringent requirements regarding criminal histories for firefighter certification. The bill effectively bars applicants with a prior felony conviction, a misdemeanor relating to perjury or false statements, or a dishonorable discharge, from ever gaining certification as a firefighter. These standards are enforced through expanded reporting requirements and better tracking of felony convictions.

DFS will compare records of convictions from the Comprehensive Case Information System of the Florida Association of Court Clerks and Comptrollers against DFS's licensing database. If the agency becomes aware of any matches, SFM will open a case to investigate the licensee. The bill provides new authority allowing the agency to require submission of fingerprints from licensees whom the agency suspects, after investigation, of being convicted of a felony.

The bill also extends the certification period for firefighters and fire safety inspectors from three to four years, and it gives firefighters new options for retaining their certifications. The bill grants SFM authority to establish new certificates for specialized firefighting instruction, and it allows the agency to contract with third parties to administer examinations.

Among numerous other provisions, the bill:

- expands statutes criminalizing impersonation of firefighters and tampering with fire protection systems;
- amends protocols addressing firefighter workplaces with a high frequency of employee injuries;
- requires that new boilers must meet the most current mandatory boiler code before they are installed;
- mandates that state-owned or leased buildings utilize the U.S. National Grid Coordinate System;
- reduces fees for downgrading fire equipment dealer's license to a lesser category;
- creates a system for out-of-state fire equipment dealers to obtain independent inspections; and
- requires outdoor fireworks displays to comply with the current Florida Fire Prevention Code.

The bill will have an insignificant positive fiscal impact on state government expenditures. In addition, the bill may have an insignificant negative impact on revenues to the Insurance Regulatory Trust Fund (IRTF) based on the proposed new option to downgrade Fire Equipment Dealer Licenses.

The bill takes effect July 1, 2013.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h0883c.GOAS

**DATE:** 3/28/2013

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background on Division of State Fire Marshal**

Florida's Division of State Fire Marshal (SFM), located within the Department of Financial Services (DFS), is a state agency whose primary responsibility is to minimize the loss of life and property due to fire and to protect the public from threats of fire, arson, and other natural or man-made disasters and hazards. SFM is organized into four bureaus:

- The Bureau of Fire and Arson Investigations is the law enforcement branch of the division, which conducts fire, arson, and explosives investigations as well as investigating other associated crimes, such as insurance fraud and homicide.
- The Bureau of Fire Prevention inspects state-owned and state-leased buildings and develops the statewide Florida Fire Prevention Code. The bureau also evaluates new building and renovation construction plans to determine compliance with fire safety codes and licenses fire protection contractors, fireworks manufacturers and distributors, explosive storage locations, and construction mining sites. In addition, the bureau assists local governments in providing fire prevention services, and inspects boiler systems to determine compliance with state codes.
- The Bureau of Fire Standards and Training provides state certification and training for both paid and volunteer firefighters. The bureau operates the Florida State Fire College, regulates certified fire training centers, and develops curricula for the state fire college, training centers, and colleges that provide courses accepted for certification.
- The Bureau of Forensic Fire and Explosives Analysis provides forensic laboratory services. The laboratory supports fire, explosion, and arson investigations by providing forensic analysis of fire and explosives debris as well as forensic video analysis, photographic and digital imaging evidence.

##### **Regulatory review and proposed reorganization of Chapter 633, F.S.**

Upon taking office, Florida's Chief Financial Officer ordered each division within DFS to undergo a regulatory review. Upon a thorough examination of the statutes currently governing SFM and its regulatory authority, DFS determined that numerous provisions are redundant, obsolete, difficult for DFS to administer, or complicated for DFS or the public to interpret.

As a result of this effort and discussions with stakeholders, DFS developed this proposal to effect a comprehensive rewrite and reorganization of Chapter 633, F.S., entitled Fire Prevention and Control. The bill is intended to provide clarity for SFM as well as firefighters, fire service providers, fire equipment dealers, and contractors. However, as well as deleting numerous provisions that are outdated or redundant, the bill also makes several substantive policy changes:

- **Creates more stringent requirements regarding criminal histories for firefighter certification.** The bill effectively bars applicants with a prior felony conviction, a misdemeanor relating to perjury or false statements, or a dishonorable discharge, from ever gaining certification as a firefighter. This is a change from current policy, which allows felony convicts to become certified after four years following the expiration of his or her felony sentence. The new language reflects the same standards DFS applies for other licensees such as insurance agents, adjusters, and bail bondsmen. These standards will be enforced through expanded reporting requirements and better tracking of felony convictions.
- **Expands reporting requirements.** To ensure that new standards barring criminal backgrounds are enforced, the bill expands reporting requirements to require that licensees must notify SFM in writing of any felony conviction or plea of guilty or nolo contendere. The bill also requires fire service providers to notify SFM of important status changes and to exercise due diligence to determine the validity of an applicant's certification application. The bill also requires licensees to notify SFM of any change of address. DFS states that these changes will improve the accuracy of SFM's

database, which is impaired by current statutes that encourage but do not require important notifications regarding firefighter status changes to be reported to SFM.

- **Requires fire service personnel with suspected criminal histories to submit digital fingerprints.** DFS will compare records of convictions from the Comprehensive Case Information System of the Florida Association of Court Clerks and Comptrollers<sup>1</sup> against DFS's licensing database.<sup>2</sup> If the agency becomes aware of any matches, SFM will open a case to investigate the licensee. The bill provides new authority allowing the agency to require submission of fingerprints from licensees whom the agency suspects, after investigation, of being convicted of a felony.<sup>3</sup> DFS believes this approach will allow the agency to remove bad actors without unduly burdening fire safety personnel.
- **Extends certification period for firefighters and fire safety inspectors to four years.** Consistent with many other state certifications, the bill standardizes the certification period for firefighters and fire safety inspectors as four years, up from the current three years. The bill also gives fire safety instructors four years, instead of three, to complete an increased number of required continuing education hours.
- **Gives firefighters more options for retaining certifications.** The bill allows firefighters to retain certifications by:
  - being active as a firefighter for six months in the previous four year period;
  - maintaining a current valid fire safety instructor certificate and instructing at least 40 hours during the prior four years;
  - successfully completing a 40-hour refresher course; OR
  - retaking and passing the practical portion of the minimum standards exam within the six months before the four year certification period expires.
- **Creates new training options for fire safety personnel and allows for exams to be administered by contracting third parties.** The bill grants SFM rulemaking authority to establish additional certificates for specialized firefighting instruction such as hazardous materials and urban search and rescue. The bill also allows SFM the ability to contract with independent third parties to administer examinations, and it allows for direct payments from applicants to third party contractors conducting the exam.

The bill further provides for an electronic database to register training providers, and it requires providers to be registered to teach and have class curricula approved prior to their delivery. Such preapproval of providers and curricula ensures that students who register and attend such classes will receive credit from SFM.

- **Expands statutes criminalizing impersonation of firefighters and tampering with fire protection systems.** The bill strengthens the felony impersonation statute to cover impersonation of a volunteer firefighter and to mirror the language of statutes criminalizing impersonation of law enforcement officers. In addition, the bill expands the crime of rendering a fire extinguisher inoperable to cover disabling of fire protection systems.
- **Reduces fee for downgrading fire equipment dealer's license to a lesser category.** The bill consolidates all fees assessed by SFM into the same section, and it creates a new, reduced fee of \$10 for fire equipment dealers seeking to downgrade their license to a lesser category. Currently, such dealers must pay \$10 to upgrade their license to a higher category, but if they wish to downgrade they must pay a higher fee of \$150 to \$250 depending on the license sought.

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<sup>1</sup> Organized under s. 28.2405, F.S.

<sup>2</sup> Pursuant to s. 893.11, F.S., clerks of court are required to provide convictions database access to state agencies at no cost and also to provide agencies with certified copies of judgments upon request.

<sup>3</sup> DFS has similar authority to fingerprint insurance licensees with suspected felony convictions under s. 626.601(5), F.S.

- **Amends protocols addressing firefighter workplaces with a high frequency of employee injuries.** The bill allows fire safety providers to collaborate with SFM on adopting a corrective action program. Current statute requires SFM to develop the corrective action plan on its own. The agency believes such plans are better implemented when the affected fire safety provider participates in drafting the corrective action program. The bill further authorizes SFM to seek new administrative remedies, including cease and desist orders and administrative fines, against dangerous workplaces that fail to comply with their corrective action programs.
- **Requires that new boilers must meet the most current mandatory boiler code before they are installed.** The bill adopts the most recent version of the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers in statute, and requires that installers of new boilers present the ASME manufacturer's data report to the chief inspector before the boiler is placed in operation. Current statute only required such a report within 90 days following installation of the boiler.
- **Mandates that state-owned or state-leased buildings be identified through the use of the U.S. National Grid Coordinate System.** The bill furthers an ongoing effort by SFM, as the coordinating agency for search and rescue under the State Comprehensive Emergency Management Plan, to adopt the U.S. National Grid in partnership with the Division of Emergency Management as the standard in Florida maps for both emergency and other operations.
- **Creates system for out-of-state fire equipment dealers to obtain independent inspections.** Current law requires SFM to inspect any fire equipment dealer that does business in Florida, and SFM now sends inspectors to dealers located outside the state, incurring significant travel costs in excess of the fee assessed by SFM for the inspection. The bill allows such dealers to obtain an independent inspection from a licensed inspector, or alternatively to pay all travel costs incurred by SFM for inspecting the facility.
- **Increases membership of the Firefighters Employment, Standards, and Training Advisory Council (FESTAC).** FESTAC is a statutory advisory council that recommends uniform standards governing the employment, health, safety, training, and educational aspects of Florida's fire and emergency services. The bill adds an additional member to be nominated by the Florida Forest Service. The bill also clarifies language and codifies current practice relating to the council's organization, duties, travel, and expenses.
- **Mandates that the Florida Fire Code Advisory Council (FCAC) meet at least semiannually.** The bill codifies current practice, providing that FCAC may review proposed changes to the Florida Fire Prevention Code and uniform fire safety standards.
- **Requires standards governing outdoor fireworks displays to comply with the current Florida Fire Prevention Code.** Current statute only requires such displays to meet 1995 standards.

#### **Administrative provisions of the bill**

The bill also contains several elements that are more administrative than substantive in nature and are intended to make SFM's governing statutes easier to administer and interpret. These provisions include:

- Adopting delivery by e-mail to licensees as adequate notification, allowing SFM to save costs relating to postage, paper, and printing.
- Eliminating the need for annual rulemakings regulating line of duty death benefits for firefighters.
- Removing references to the Florida Life Safety Code, as the Life Safety Code is considered a part of the Florida Fire Prevention Code.

- Consolidating sections regarding SFM's investigative powers and clarifying that such powers extend to investigations of explosions.
- Clarifying that the registration fee of seasonal retailers of sparklers is \$200 per location. Current law is arguably ambiguous regarding the registration fee owed by seasonal retailers of sparklers that do business in Florida.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 112.011, F.S., to strike disciplinary language that is moved to s. 633.304, F.S.

**Section 2:** Amends s. 112.191, F.S., to provide that existing line of duty death benefits for firefighters adjust annually based on cost of living, eliminating the need for annual rulemaking to that effect.

**Section 3:** Creates and entitles Part I of Chapter 633 "General Provisions".

**Section 4:** Renumbers s. 633.021, F.S., as s. 633.102, F.S., and adds and deletes definitions.

**Section 5:** Renumbers s. 633.01, F.S., as s. 633.104, F.S., and amends language to require the renewal of fire safety inspector certifications every four years and allow the SFM to contract with a third party to administer examinations.

**Section 6:** Renumbers ss. 633.163 and 633.167, F.S., as s. 633.106, F.S., and amends language to consolidate disciplinary proceedings into the same section and allow for new disciplinary proceedings against SFM licensees who lack qualifications for licensure.

**Section 7:** Renumbers s. 633.15, F.S., as s. 633.108, F.S.

**Section 8:** Renumbers and combines parts of ss. 633.101, 633.18, 633.03, and 633.111, F.S., as s. 633.112, F.S., to consolidate sections regarding SFM's investigative powers and clarify that such powers extend to investigations of explosions.

**Section 9:** Renumbers and combines ss. 633.02 and 633.13, F.S., as s. 633.114, F.S.

**Section 10:** Renumbers s. 633.14, F.S., as s. 633.116, F.S.

**Section 11:** Renumbers s. 633.121, F.S., as s. 633.118, F.S., and amends to change "fire department" to "fire service provider."

**Section 12:** Renumbers s. 633.151, F.S., as s. 633.122, F.S., and amends to add penalties for impersonation of a volunteer firefighter.

**Section 13:** Renumbers s. 633.171, F.S., as s. 633.124, F.S., and amends to add penalties for rendering a fire protection system inoperable.

**Section 14:** Renumbers s. 633.175, F.S., as s. 633.126, F.S., and amends to add definition of "consultant" and clarify that SFM's investigatory powers extend to investigations of explosions.

**Section 15:** Renumbers s. 633.45, F.S., as s. 633.128, F.S., and amends to give instructors four years to complete an increased number of continuing education hours.

**Section 16:** Creates s. 633.132, F.S., to codify current fees assessed by FSM and to reduce fee for downgrading to a lesser fire equipment dealer license.

**Section 17:** Renumbers s. 633.39, F.S., as s. 633.134, F.S.

**Section 18:** Renumbers s. 633.115, F.S., as s. 633.036, F.S., and amends for consistency of language.

**Section 19:** Creates s. 633.138, F.S., to impose expanded reporting requirements on licensees.

**Section 20:** Renumbers ss. 633.042, and 633.0421, F.S., as s. 633.142, F.S.

**Section 21:** Creates and entitles Part II of Chapter 633 "Fire Safety and Prevention".

**Section 22:** Renumbers s. 633.0215, F.S., as s. 633.202, F.S, and amends to remove obsolete provisions.

**Section 23:** Renumbers s. 633.72, F.S., as s. 633.204, F.S, and amends to codify current practices relating to the Florida Fire Code Advisory Council.

**Section 24:** Renumbers s. 633.022, F.S., as s. 633.206, F.S, and amends to remove obsolete provisions and to clarify that state universities are state owned facilities.

**Section 25:** Renumbers s. 633.025, F.S., as s. 633.208, F.S, and amends for consistency of language.

**Section 26:** Renumbers s. 633.026, F.S., as s. 633.212, F.S, and amends for consistency of language.

**Section 27:** Renumbers s. 633.052, F.S., as s. 633.214, F.S, and amends for consistency of language.

**Section 28:** Renumbers s. 633.081, F.S., as s. 633.216, F.S, and amends to remove transferred language and to extend fire safety inspector certification period to four years.

**Section 29:** Renumbers s. 633.085, F.S., as s. 633.218, F.S, and amends to add definitions and to require state-owned or state-leased buildings to be identified through the use of the U.S. National Grid Coordinate System.

**Section 30:** Renumbers s. 633.027, F.S., as s. 633.222, F.S.

**Section 31:** Renumbers s. 633.60, F.S., as s. 633.224, F.S.

**Section 32:** Renumbers s. 633.557, F.S., as s. 633.226, F.S.

**Section 33:** Renumbers s. 633.161, F.S., as s. 633.228, F.S.

**Section 34:** Creates and entitles Part III of Chapter 633 "Fire Protection and Suppression".

**Section 35:** Renumbers ss. 633.511, and 633.514, F.S., as s. 633.302, F.S, and amends for consistency of language.

**Section 36:** Renumbers s. 633.061, F.S., as s. 633.304, F.S, and amends to remove transferred provisions, add definitions, and provides procedures for out-of-state applicants and licensees to obtain a facility inspection.

**Section 37:** Renumbers s. 633.065, F.S., as s. 633.306, F.S.

**Section 38:** Renumbers s. 633.071, F.S., as s. 633.308, F.S.

**Section 39:** Renumbers s. 633.082, F.S., as s. 633.312, F.S, and amends for consistency of language.

**Section 40:** Renumbers s. 633.083, F.S., as s. 633.314, F.S, and amends for consistency of language.

**Section 41:** Renumbers s. 633.162, F.S., as s. 633.316, F.S, and amends for consistency of language.

**Section 42:** Renumbers s. 633.521, F.S., as s. 633.318, F.S, and amends for consistency of language.

**Section 43:** Renumbers s. 633.551, F.S., as s. 633.322, F.S, and amends for consistency of language.

**Section 44:** Renumbers s. 633.527, F.S., as s. 633.324, F.S.

**Section 45:** Renumbers s. 633.531, F.S., as s. 633.326, F.S.

**Section 46:** Renumbers s. 633.534, F.S., as s. 633.328, F.S, and amends for consistency of language.

**Section 47:** Renumbers s. 633.537, F.S., as s. 633.332, F.S, and amends for consistency of language.

**Section 48:** Renumbers s. 633.539, F.S., as s. 633.334, F.S, and amends for consistency of language.

**Section 49:** Renumbers s. 633.541, F.S., as s. 633.336, F.S, and amends for consistency of language.

**Section 50:** Renumbers s. 633.547, F.S., as s. 633.338, F.S, and amends for consistency of language.

**Section 51:** Renumbers s. 633.549, F.S., as s. 633.342, F.S, and amends for consistency of language.

**Section 52:** Renumbers s. 633.554, F.S., as s. 633.344, F.S.

**Section 53:** Renumbers s. 633.70, F.S., as s. 633.346, F.S.

**Section 54:** Renumbers s. 633.701, F.S., as s. 633.348, F.S.

**Section 55:** Renumbers s. 633.702, F.S., as s. 633.3482, F.S, and amends for consistency of language.

**Section 56:** Creates and entitles Part IV of Chapter 633 “Fire Standards and Training”.

**Section 57:** Renumbers ss. 633.31, 633.32, and 633.33, F.S., as s. 633.402, F.S, and amends to increase membership of Firefighters Employment, Standards, and Training Advisory Council.

**Section 58:** Renumbers s. 633.42, F.S., as s. 633.404, F.S, and amends for consistency of language.

**Section 59:** Creates s. 633.406, F.S., to codify current certificates awarded by the division and grants rulemaking authority to establish additional certificates for specialized firefighting instruction.

**Section 60:** Renumbers ss. 633.35 and 633.37, F.S., as s. 633.408, F.S., and amends to clarify courses that must be taken to attain certificates.

**Section 61:** Renumbers s. 633.34, F.S., as s. 633.412, F.S., and amends to impose new requirements related to criminal history on applicants for firefighter certification.

**Section 62:** Renumbers s. 633.352, F.S., as s. 633.414, F.S., and amends to extend firefighter certifications to four years and to offer new options to retain firefighter certifications.

**Section 63:** Renumbers s. 633.41, F.S., as s. 633.416, F.S, and amends to add reporting requirements for fire service providers.

**Section 64:** Renumbers s. 633.38, F.S., as s. 633.418, F.S, and amends for consistency of language.

**Section 65:** Renumbers s. 633.382, F.S., as s. 633.422, F.S, and amends to remove obsolete provisions and to add “full time employee” to qualifications for supplement compensation.

**Section 66:** Renumbers s. 633.353, F.S., as s. 633.424, F.S, and amends for consistency of language.

**Section 67:** Renumbers s. 633.351, F.S., as s. 633.426, F.S, and amends to create felony tracking system for fire service personnel through digital fingerprinting.

**Section 68:** Renumbers s. 633.43, F.S., as s. 633.428, F.S, and amends for consistency of language.

**Section 69:** Renumbers s. 633.44, F.S., as s. 633.432, F.S, and amends for consistency of language.

**Section 70:** Renumbers s. 633.48, F.S., as s. 633.434, F.S.

**Section 71:** Renumbers s. 633.461, F.S., as s. 633.436, F.S, and amends for consistency of language.

**Section 72:** Renumbers s. 633.46, F.S., as s. 633.446, F.S.

**Section 73:** Renumbers s. 633.47, F.S., as s. 633.438, F.S.

**Section 74:** Renumbers s. 633.49, F.S., as s. 633.442, F.S.

**Section 75:** Renumbers s. 633.50, F.S., as s. 633.444, F.S., and amends to require training providers to be licensed and have class curricula approved prior to delivery.

**Section 76:** Creates and entitles Part V of Chapter 633 “Florida Firefighters Occupational Safety and Health Act”.

**Section 77:** Renumbers s. 633.801, F.S., as s. 633.502, F.S.

**Section 78:** Renumbers s. 633.802, F.S., as s. 633.504, F.S., and amends to clarify definitions.

**Section 79:** Renumbers s. 633.803, F.S., as s. 633.506, F.S., and amends with conforming language.

**Section 80:** Renumbers ss. 633.821 and 633.808, F.S., as s. 633.508, F.S., and amends to remove obsolete provisions.

**Section 81:** Renumbers s. 633.817, F.S., as s. 633.512, F.S., and amends with conforming language.

**Section 82:** Renumbers s. 633.805, F.S., as s. 633.514, F.S.

**Section 83:** Renumbers ss. 633.806 and 633.815, F.S., as s. 633.516, F.S., and amends for consistency of language.

**Section 84:** Renumbers s. 633.807, F.S., as s. 633.518, F.S., and amends for consistency of language.

**Section 85:** Renumbers ss. 633.809, 633.810, and 633.813, F.S., as s. 633.522, F.S., and amends to allow fire safety providers with high frequencies of injuries to collaborate with SFM on adopting a corrective action program.

**Section 86:** Renumbers s. 633.811, F.S., as s. 633.526, F.S., and amends to allow SFM to seek new administrative remedies against workplaces that fail to comply with corrective action programs.

**Section 87:** Renumbers s. 633.812, F.S., as s. 633.528, F.S., and amends with conforming language.

**Section 88:** Renumbers s. 633.816, F.S., as s. 633.532, F.S., and amends with conforming language.

**Section 89:** Renumbers ss. 633.818 and 633.819, F.S., as s. 633.534, F.S., and amends to remove obsolete language.

**Section 90:** Renumbers s. 633.814, F.S., as s. 633.536, F.S., and amends to remove obsolete cross-references.

**Section 91:** Amends s. 554.103, F.S., to require new boilers to meet the most current mandatory boiler code before they are installed.

**Section 92:** Amends s. 791.012, F.S., to require outdoor fireworks displays to comply with the current Florida Fire Prevention Code.

**Section 93:** Amends s. 791.015, F.S., to clarify that the registration fee of seasonal retailers of sparklers is \$200 per location.

**Section 94:** Repeals ss. 633.024, 633.0245, 633.30, 633.445, 633.524, 633.804, and 633.820, F.S.

**Sections 95 through 140:** Corrects cross references to reflect new chapter organization.

**Section 141:** Establishes an effective date of July 1, 2013.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill will have an insignificant fiscal impact on state government revenues. The DFS indicates that there may be a loss of \$300 in revenue to the Insurance Regulatory Trust Fund (IRTF) based on the new option to downgrade Fire Equipment Dealer Licenses. Only 2 Fire Equipment Dealers that would qualify as a downgrade in license have been recorded since December of 2011.

#### 2. Expenditures:

See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

The bill will allow for the SFM to adopt delivery by e-mail as adequate notification to licensees for any official communication by the division. This will reduce the expenditures related to postage and printing currently used by the department to notify licensees and produce an estimated annual savings of \$26,000.

The bill also eliminates the SFM's travel expenditures associated with inspections of out-of-state fire equipment dealers. Current law requires the SFM to send inspectors to dealers located outside the state, incurring significant travel expenditures in excess of the fee assessed by the SFM for the inspection. The bill eliminates these expenditures by allowing such dealers to obtain an independent inspection from a licensed inspector, or alternatively, to pay all travel expenditures incurred by the SFM for inspecting the facility.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or, reduce the percentage of a state tax shared with counties or municipalities.

##### 2. Other: *Incorporation by reference and delegation of legislative authority*

Currently, s. 554.103, F.S., gives rulemaking authority to DFS to adopt by rule a State Boiler Code for the safe construction, installation, inspection, maintenance, and repair of boilers in this state.

Lines 6034-6040 of the bill mandate that “new boilers installed or imported into this state shall be constructed to the most current mandatory boiler code, known as the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers, *including all amendments, code cases, and interpretations approved thereto* by the Council on Codes and Standards of A.S.M.E.” (emphasis added). It appears that DFS intends this provision to enable the agency to use the most recent boiler code instead of adopting the new code each year via rule.<sup>4</sup>

As a general rule, a cross-reference to a specific statute or model act incorporates the language of the referenced act as it existed at the time the reference was enacted, unaffected by any subsequent amendments to the incorporated act.<sup>5</sup> For example, the legislature may adopt provisions of federal statutes and administrative rules made by a federal administrative body “that are in existence and in effect at the time the legislature acts, but it would be an unconstitutional delegation of legislative power for the legislature to adopt in advance any federal act or the ruling of any federal administrative body that Congress or such administrative body might see fit to adopt in the future.”<sup>6</sup>

A court would likely apply this same principle when reviewing a statute that incorporates a model act promulgated by an organization such as ASME. Accordingly, while the bill may adopt the current ASME model act in effect, it is possible that a reviewing court would not uphold that part of a statute that adopts any future amendments to that model act.<sup>7</sup>

#### B. RULE-MAKING AUTHORITY:

The bill provides that SFM has rulemaking authority to achieve the following objectives:

- Establish uniform minimum standards for firefighter training.<sup>8</sup>
- Establish criteria for the approval of fire safety education or training providers and the approval of fire safety instruction course curricula.<sup>9</sup>

<sup>4</sup> Material on file with Banking & Insurance Subcommittee staff.

<sup>5</sup> See *Overstreet v. Blum*, 227 So. 2d 197 (Fla. 1969); *Hecht v. Shaw*, 151 So. 333 (1933).

<sup>6</sup> *Florida Industrial Commission v. State*, 155 Fla. 772, 21 So.2d 599 (1945). See also *Freimuth v. State*, 272 So.2d 473 (Fla.1972); *State v. Camil*, 279 So.2d 832 (Fla.1973).

<sup>7</sup> Courts may sever a valid portion of laws from the remainder and continue to enforce the valid portion. *Carter v. Carter Coal Co.*, 298 U.S. 238 (1936); *Florida Hosp. Waterman, Inc. v. Buster*, 984 So.2d 478 (Fla. 2008); *Ray v. Mortham*, 742 So.2d 1276 (Fla. 1999); *Wright v. State*, 351 So.2d 708 (Fla. 1977).

<sup>8</sup> Sections 15, 59, 60, and 62, CS/HB 883.

<sup>9</sup> Section 75, CS/HB 883.

- Establish procedures for reporting by insurance companies of suspected intentional fires to SFM.<sup>10</sup>
- Administer required reporting by fire service providers of important changes in status of fire safety personnel.<sup>11</sup>
- Create a system for inspecting out-of-state fire equipment dealers or to recoup travel costs incurred by SFM.<sup>12</sup>
- Approve course work or degrees that qualify a firefighter for supplemental compensation while pursuing higher education.<sup>13</sup>

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 13, 2013, the Insurance & Banking Subcommittee considered the bill and adopted a strike-all amendment removing provisions requiring FDLE to search and retain the fingerprints of currently employed firefighters. This change removed the bill's negative fiscal impact to DFS. In addition, the amendment removed a provision that provided DFS new rulemaking authority for creating new fees, and it restored language contained in current law providing the agency authority to fix and collect admission fees for fire safety training purposes. Furthermore, the amendment extended from two to four years the period during which fire equipment dealers may maintain an inactive permit; clarified definitions to reflect current practices; restored current law providing locations for which SFM is required to adopt minimum fire safety standards; clarified the scope of contractor licenses; and corrected drafting errors. The analysis has been updated to reflect the change made by adoption of the amendment.

On March 27, 2013, the Government Operations Appropriations Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The amendments:

- Correct a drafting error in the bill by providing that all moneys collected by the State Fire Marshal shall be deposited into the Insurance Regulatory Trust Fund.
- Correct a drafting error in the bill relating to a Certificate of Competency.
- Correct a drafting error in the bill relating to valid fire instructor certificates.

This analysis is drafted to the committee substitute as passed by the Government Operations Appropriations Subcommittee.

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<sup>10</sup> Section 14, CS/HB 883.

<sup>11</sup> Section 63, CS/HB 883.

<sup>12</sup> Section 36, CS/HB 883.

<sup>13</sup> Section 64, CS/HB 883.