

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 Committee on Governmental Oversight and Accountability

BILL: CS/SB 498

INTRODUCER: Criminal Justice Committee and Senator Powell

SUBJECT: Fire Safety and Prevention

DATE: March 11, 2019 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	Fav/CS
2.	<u>Hackett</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 498 creates s. 633.217, F.S., to criminalize certain actions taken to influence a firesafety inspector to violate the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of ch. 633, F.S.

The bill provides that a first violation of the new statute is a second degree misdemeanor, and a second or subsequent violation is a first degree misdemeanor.

The bill does not have a state prison bed impact because no felony penalties are imposed. The misdemeanor penalties in the bill may have an indeterminate impact on county jails.

The bill takes effect October 1, 2019.

II. Present Situation:

Division of the State Fire Marshal

State law on fire prevention and control¹ designates the Chief Financial Officer (CFO) as the State Fire Marshal, operating through the Division of the State Fire Marshal (Division).²

Pursuant to this authority, the State Fire Marshal:

- Regulates, educates or trains, and certifies fire service personnel;³
- Investigates the causes of fires;⁴
- Enforces arson laws;⁵
- Regulates the installation and maintenance of fire equipment;⁶
- Conducts firesafety inspections of state buildings;⁷
- Develops firesafety standards;⁸
- Provides testing facilities for testing firefighting equipment;⁹ and
- Operates the Florida State Fire College.¹⁰

The Division consists of two bureaus: the Bureau of Fire Standards and Training (BFST), and the Bureau of Fire Prevention.¹¹ The Florida Fire College, part of the BFST, trains over 6,000 students per year.¹² The Inspections Section, under the Bureau of Fire Prevention, annually inspects more than 14,000 state-owned buildings and facilities. Over 1.8 million fire and emergency reports are collected every year. These reports are entered into a database to form the basis for the State Fire Marshal's annual report.¹³

Florida Fire Prevention Code

The State Fire Marshal adopts by rule the Florida Fire Prevention Code (FFPC), which contains all firesafety laws and rules that pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such firesafety laws and rules.¹⁴ The State Fire Marshal adopts a new edition of the FFPC every three years.¹⁵ The FFPC includes national firesafety and life

¹ Chapter 633, F.S.; s. 633.104(1), F.S.

² The head of the Department of Financial Services (DFS) is the Chief Financial Officer. The Division of the State Fire Marshal is located within the DFS. *See* s. 20.121, F.S.

³ Section 633.128(1), F.S. *See* Part IV, ch. 633, F.S. (Fire Standards and Training).

⁴ Sections 633.104(2)(e) and 633.112, F.S.

⁵ Section 633.104(2), F.S.

⁶ Section 633.104(2)(b), F.S. *See* s. 633.104(2)(c), F.S., and part II, ch. 633, F.S. (Fire Protection and Suppression).

⁷ Section 633.218, F.S.

⁸ Part II, ch. 633, F.S. (Fire Safety and Prevention).

⁹ Section 633.432, F.S.

¹⁰ Section 633.128(1)(h)–(q), F.S. *See* ss. 633.428–633.434, F.S.

¹¹ *What We Do*, State Fire Marshall, available at <https://www.myfloridacfo.com/Division/sfm/> (last visited on Feb. 11, 2019).

¹² *About the Florida State Fire Marshall*, Division of State Fire Marshal, *About the Florida State Fire Marshal*, available at <http://www.myfloridacfo.com/division/sfm/AbouttheStateFireMarshal.htm> (last visited on Feb. 11, 2019).

¹³ *Id.*

¹⁴ Section 633.202(1), F.S. *See* ch. 69A-60, F.A.C.

¹⁵ *Id.*

safety standards set forth by the National Fire Protection Association (NFPA),¹⁶ including the NFPA's Fire Code (1), Life Safety Code (101), and Guide on Alternative Approaches to Life Safety (101A).¹⁷

Firesafety Enforcement by Local Governments

State law requires all municipalities, counties, and special districts with firesafety responsibilities to enforce the FFPC as the minimum fire prevention code, which operates uniformly among local governments and in conjunction with the Florida Building Code.¹⁸ These local enforcing authorities may adopt more stringent firesafety standards, subject to certain requirements in s. 633.208, F.S.,¹⁹ but may not enact firesafety ordinances which conflict with ch. 633, F.S., or any other state law.²⁰

The chiefs of local government fire service providers (or their designees) are authorized to enforce ch. 633, F.S., and the rules prescribed by the State Fire Marshal within their respective jurisdictions as agents of those jurisdictions, not agents of the State Fire Marshal.²¹ Each county, municipality, and special district with firesafety enforcement responsibilities is also required to employ or contract with a firesafety inspector (certified by the State Fire Marshal) to conduct all firesafety inspections required by law.²²

Firesafety Inspectors

Section 633.102(12), F.S., defines a firesafety inspector as an individual who holds a current and valid Fire Safety Inspector Certificate of Compliance issued by the Division under s. 633.216, F.S., who is officially assigned the duties of conducting firesafety inspections of buildings and facilities on a recurring or regular basis on behalf of the state or any county, municipality, or special district with fire safety responsibilities.²³ The BFST issues certifications for Firesafety Inspector I and Firesafety Inspector II.²⁴

A person applying for certification as a Firesafety Inspector I must:

¹⁶ Section 633.202(2), F.S. Founded in 1896, the NFPA is a global, nonprofit organization devoted to eliminating death, injury, property and economic loss due to fire, electrical and related hazards. It has developed over 300 voluntary consensus codes and standards in the areas of fire, electrical, and building safety which are widely used by state and local officials. *About NFPA*, National Fire Protection Association, available at <http://www.nfpa.org/about-nfpa> (last visited on Feb. 11, 2019).

¹⁷ The NFPA states that the Guide on Alternative Approaches to Life Safety "is intended to be used in conjunction with the NFPA 101: Life Safety Code, not as a substitute." *NFPA 101A: Guide on Alternative Approaches to Life Safety*, National Fire Protection Association, available at <https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=101A> (last visited on Feb 11, 2019).

¹⁸ Sections 633.108 and 633.208, F.S.

¹⁹ See Rule 69A-60.002, F.A.C.

²⁰ Section 633.214(4), F.S. The State Fire Marshal maintains a list of local amendments to the FFPC. This information is available at <https://www.myfloridacfo.com/Division/SFM/bfp/LocalAmendments.htm> (last visited on Feb. 11, 2019).

²¹ Section 633.118, F.S.

²² Section 633.216(1), F.S.

²³ See s. 633.214(1)(a), F.S.

²⁴ Section 633.216(2), F.S., and ch. 69A-39, F.A.C. See *Certification and Testing*, Division of State Fire Marshal, Bureau of Firefighter Standards and Training, available at <https://www.myfloridacfo.com/Division/SFM/BFST/Standards/default.htm> (last visited on Feb 11, 2019).

- Be a high school graduate or the equivalent and at least 18 years of age;
- Not have been convicted of a misdemeanor relating to the certification or to perjury or false statements, or a felony or a crime punishable by imprisonment of one year or more, or be dishonorably discharged from the Armed Forces of the United States;
- Submit a set of fingerprints to the Division with a current processing fee; and
- Have a good moral character.²⁵

A Firesafety Inspector I Certificate of Compliance will be issued by the Division to an individual who:

- Successfully completes a minimum of 200 hours of basic certification training for firesafety inspectors, or has received equivalent training in another state; and
- Passes a state written examination.²⁶

The Firesafety Inspector I Certificate of Compliance is valid for a period of four years from the date of issuance. Renewal of this certificate includes completion of at least 54 hours of continuing education during the preceding four-year period.²⁷

A Firesafety Inspector II Certificate of Compliance will be issued by the Division to an individual who:

- Is certified as a Firesafety Inspector I; and
- Successfully completes a minimum of 160 hours of certification training for Firesafety Inspector II, or has received equivalent training in another state.²⁸

Criminal Penalties

Section 633.122, F.S., prohibits a person from falsely assuming or pretending to be the State Fire Marshal, an agent of the State Fire Marshal, a firefighter, a volunteer firefighter, or a firesafety inspector by identifying herself or himself as the State Fire Marshal, an agent of the State Fire Marshal, a firefighter, a volunteer firefighter, or a firesafety inspector by wearing a uniform or presenting or displaying a badge as credentials that would cause a reasonable person to believe that she or he is a State Fire Marshal, an agent of the State Fire Marshal, a firefighter, a volunteer firefighter, or firesafety inspector. A violation of this section is a third degree felony.²⁹ However, it is a first degree felony³⁰ if the impersonation occurs during the commission of a separate felony by that person.

Section 468.629, F.S., prohibits a person from influencing a building code enforcement official³¹ by coercion or compensation. Any person who violates any provision of Part XII of ch. 468,

²⁵ Sections 633.216(2) and 633.412(1)-(4), F.S.

²⁶ *Supra*, n. 23.

²⁷ Section 633.216(4), F.S., and Rule 69A-39.009(1)(b), F.A.C.

²⁸ *See supra*, n. 24, and s. 633.216(8), F.S.

²⁹ A third degree felony is punishable by a term of imprisonment not to exceed 5 years and a fine not to exceed \$5,000. Sections 775.082 and 775.083, F.S.

³⁰ A first degree felony is generally punishable by a term of imprisonment not to exceed 30 years and a fine not to exceed \$10,000. Sections 775.082 and 775.083, F.S.

³¹ Section 468.603(3), F.S., defines “building code enforcement official” (or “enforcement official”) as a licensed building code administrator, building code inspector, or plans examiner.

F.S.,³² relating to building code administrators and inspectors, commits a first degree misdemeanor.³³ A person who violates any provision of Part XII of ch. 468, F.S., after a previous conviction for such violation commits a third degree felony.

III. Effect of Proposed Changes:

The bill creates s. 633.217, F.S., to prohibit a person from:

- Influencing a firesafety inspector by threatening, coercing, tricking, persuading, interfering with, or otherwise influencing; or attempting to threaten, coerce, trick, persuade, interfere with, or otherwise attempting to influence, the firesafety inspector into violating any provision of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of ch. 633, F.S.; and
- Offering any compensation to the firesafety inspector to induce a violation of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of ch. 633, F.S.

The bill provides that a first violation of the new statute is a second degree misdemeanor,³⁴ and a second or subsequent violation is a first degree misdemeanor.

The bill takes effect October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill may require counties or municipalities to expend funds relating to persons sentenced to jail for violations of this new law. However, Art. VII, s. 18(d) of the State Constitution exempts criminal laws from the constitutional mandate requirements.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

³² Sections 468.601-468.633, F.S.

³³ A first degree misdemeanor is punishable by a jail term not to exceed one year and a fine not to exceed \$1,000. Sections 775.082 and 775.083, F.S.

³⁴ A second degree misdemeanor is punishable by a jail term not to exceed 60 days and a fine not to exceed \$500. Sections 775.082 and 775.083, F.S.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill does not create felony penalties so the bill does not have a state prison bed impact. The misdemeanor penalties in the bill may have an indeterminate impact on county jails.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 633.217 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on February 19, 2019:

The committee substitute revises penalties in the bill to provide that a first violation of newly created s. 633.217, F.S., is a second degree misdemeanor, and a second or subsequent violation is a first degree misdemeanor.

B. Amendments:

None.