

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 313 Firefighters Inquiries and Investigations

SPONSOR(S): State Affairs Committee, Government Operations Subcommittee, Busatta Cabrera, Casello and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 970

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	16 Y, 0 N, As CS	Villa	Smith
2) Civil Justice & Property Rights Subcommittee	15 Y, 0 N	Walsh	Jones
3) State Affairs Committee	23 Y, 0 N, As CS	Villa	Williamson

SUMMARY ANALYSIS

The Firefighters' Bill of Rights provides specific rights when a firefighter is under investigation and subject to interrogation for a reason that could lead to disciplinary action. Whenever an employing agency receives an allegation of misconduct, management personnel conduct an informal inquiry to determine if a formal investigation should be opened against the firefighter. Currently, questioning pursuant to an informal inquiry is not subjected to the Firefighters' Bill of Rights. The Firefighters' Bill of Rights only applies if, after an informal inquiry, the employing agency decides to conduct a formal investigation of the alleged misconduct. After a formal investigation has commenced, questioning related to the investigation is considered an interrogation and must be conducted pursuant to the Firefighters' Bill of Rights.

The bill extends certain provisions of the Firefighters' Bill of Rights to questioning conducted under an informal inquiry. Similar to interrogations currently subject to the Firefighters' Bill of Rights, the bill requires an informal inquiry of a firefighter to:

- Be of reasonable duration with permitted periods for rest and personal necessities; and
- Not subject the firefighter to offensive language or offer any incentive as an inducement to answer any questions.

The bill provides that during an informal inquiry or interrogation, a firefighter may not be threatened with a transfer, suspension, dismissal, or other disciplinary action. The bill authorizes an employee organization to represent any member of a bargaining unit desiring such representation in an informal inquiry.

Additionally, the bill provides that a firefighter under informal inquiry may not be discharged, disciplined, demoted, denied promotion or seniority, transferred, reassigned, or otherwise disciplined or discriminated against, or threatened with such action solely for exercising the rights afforded by the Firefighters' Bill of Rights.

The bill specifies that an informal inquiry does not include routine work-related discussions, such as safety sessions or normal operational fire debriefings.

The bill may have a minimal fiscal impact on state and local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Division of the State Fire Marshal

Chapter 633, F.S., provides state law on fire prevention and control. Section 633.104(1), F.S., designates the Chief Financial Officer (CFO) as the State Fire Marshal, operating through the Division of the State Fire Marshal (Division) within the Department of Financial Services.¹ Pursuant to this authority, the State Fire Marshal:

- Regulates, educates or trains, and certifies fire service personnel;²
- Investigates the causes of fires;³
- Enforces arson laws;⁴
- Regulates the installation and maintenance of fire equipment;⁵
- Conducts fire safety inspections of state buildings;⁶
- Develops fire safety standards;⁷ and
- Operates the Florida State Fire College.⁸

Additionally, the Division adopts by rule the Florida Fire Prevention Code, which contains or references all fire safety laws and rules regarding public and private buildings.⁹

The Division consist of two bureaus: the Bureau of Fire Standards and Training (BFST), and the Bureau of Fire Prevention.¹⁰ The BFST provides fire service training at the Florida State Fire College and certifies fire service members to ensure they meet industry-based standards.¹¹ The Bureau of Fire Prevention conducts fire safety inspections and construction plan reviews on all state-owned buildings, regulates the firework and fire sprinkler industries, inspects and licenses boilers, and certifies fire suppression industry personnel.¹²

Firefighters Employment, Standards, and Training Council

The Firefighters Employment, Standards, and Training Council (Council) is based within the Department of Financial Services and consists of 14 members.¹³ The Council is authorized to make recommendations for adoption by the Division on:

- Uniform minimum standards for the employment and training of firefighters and training of volunteer firefighters;
- Minimum curriculum requirements for schools operated by or for any fire service provider for the specific purpose of training firefighter trainees, firefighters, and volunteer firefighters; and
- Matters relating to the funding, general operation, and administration of the Bureau of Fire Standards and Training (Florida State Fire College), including but not limited to, all standards, training, curriculum, and the issuance of any certificate of competency.¹⁴

¹ The head of the Department of Financial Services (DFS) is the Chief Financial Officer. See s. 20.121, F.S.

² Section 633.128(1), F.S.; see also ch. 633, part IV: Fire Standards and Training, F.S.

³ Section 633.104(2)(e), F.S.

⁴ *Id.*

⁵ Section 633.104(2)(b), F.S.; see also s. 633.104(2)(c), F.S., and ch. 633, part III: Fire Protection and Suppression, F.S.

⁶ Section 633.218, F.S.

⁷ Chapter 633, part II: Fire Safety and Prevention, F.S.

⁸ Section 633.128(1)(h)-(q), F.S.; see also ss. 633.428-633.434, F.S.

⁹ Section 633.202(1), F.S.

¹⁰ Jimmy Patronis Florida's Chief Financial Officer, *Division of State Fire Marshal*, <https://www.myfloridacfo.com/division/sfm/> (last visited February 5, 2021).

¹¹ *Id.*

¹² *Id.*

¹³ Section 633.402(1), F.S.

¹⁴ Section 633.402(9)(a)-(c), F.S.

The Council may also make or support studies on any aspect of firefighting employment, education, training, or recruitment.¹⁵

Curriculum Requirements for Firefighters

A person applying for certification as a firefighter must:

- Be a high school graduate or the equivalent thereof 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;
- Have a good moral character;
- Be in good physical condition as determined by a medical examination; and
- Be a nonuser of tobacco products for at least one year immediately preceding application.¹⁶

The Division is responsible for establishing a Minimum Standards Course as the training and educational curriculum required in order for a firefighter to obtain a Firefighter Certificate of Compliance (FCOC).¹⁷ A FCOC is issued by the Division to an individual who does all of the following:

- Satisfactorily completes the Minimum Standards Course or has satisfactorily completed training for firefighters in another state that has been determined by the Division to be at least the equivalent of the training required for the Minimum Standards Course;
- Passes the Minimum Standards Course examination within 12 months after completing the required courses; and
- Meets the character and fitness requirements in s. 633.412, F.S.¹⁸

In order for a firefighter to retain or renew his or her FCOC every four years he or she must:

- Be active as a firefighter;
- Maintain a current and valid fire service instructor certificate, instruct at least 40 hours during the four-year period, and provide proof of such instruction to the Division;
- Within six months before the four-year period expires, successfully complete a Firefighter Retention Course consisting of a minimum of 40 hours of training; or
- Within six months before the four-year period expires, successfully retake and pass the Minimum Standards Course examination.¹⁹

Firefighters' Bill of Rights

The Firefighters' Bill of Rights provides specific rights when a firefighter²⁰ is under investigation and subject to interrogation for a reason that could lead to disciplinary action, including reprimand, suspension, or dismissal.²¹ There is a similar law for law enforcement and correctional officers known as the Law Enforcement Officers' Bill of Rights.²²

¹⁵ Section 633.402(9)(d), F.S.

¹⁶ Section 633.412, F.S.

¹⁷ Section 633.408(1)(a), F.S.

¹⁸ Section 633.408(4), F.S.

¹⁹ Section 633.414(1), F.S.

²⁰ "Firefighter" means a person who is certified in compliance with s. 633.408, F.S., and who is employed solely within the fire department or public safety department of an employing agency as a full-time firefighter whose primary responsibility is the prevention and extinguishment of fires; the protection of life and property; and the enforcement of municipal, county, and state fire prevention codes and laws pertaining to the prevention and control of fires. Section 112.81(1), F.S.

²¹ Chapter 112, Part VIII, F.S.

²² Chapter 112, Part VI, F.S.

Currently, whenever an employing agency²³ receives an allegation of misconduct regarding one of its firefighters, management personnel may conduct an informal inquiry²⁴ to determine whether a formal investigation²⁵ should be conducted. Informal inquiries are not subject to the requirements of the Firefighters' Bill of Rights. Such requirements only attach if, after an informal inquiry, the employing agency determines a formal investigation is necessary. After a formal investigation has been ordered, questioning related to the investigation is considered an interrogation²⁶ and must be conducted in compliance with the Firefighters' Bill of Rights.

Under the Firefighters' Bill of Rights, before an interrogation may begin, the firefighter must have received written notice informing the firefighter of the nature of the investigation, and must also be informed of all complainants' identities.²⁷ The interrogation must take place either where the investigating officer is assigned or in the jurisdiction where the alleged misconduct occurred.²⁸ Additionally, the interrogation may be no longer than is reasonably necessary and must be conducted at a reasonable time of day, preferably when the firefighter is on duty, unless immediate action is required.²⁹ The firefighter under investigation must be informed of the head investigator's and interrogator's credentials as well as the credentials of any other persons present, and may not be subjected to offensive language or offered any incentive as an inducement to answer any questions.³⁰ During the interrogation, the firefighter may be represented by an employee organization if he or she is a member and desires such representation.³¹ If a collective bargaining agreement requires a representative of the bargaining unit to be present during any investigation or interrogation, such representative is permitted attendance.³² A complete record of any interrogation must be made, and if a transcript is made, the firefighter under investigation is entitled to a copy without charge.

The Firefighters' Bill of Rights prohibits a firefighter from being discharged, disciplined, demoted, denied promotion or seniority, transferred, reassigned, or otherwise disciplined or discriminated against, or threatened with such action solely for exercising his or her rights under the Firefighters' Bill of Rights.³³ If the employing agency fails to comply with the Firefighters' Bill of Rights, the firefighter may seek an injunction in circuit court to restrain and enjoin the violation and obligate the agency to complete the process as required by law.³⁴

Effect of the Bill

The bill extends some of the rights enumerated in the Firefighters' Bill of Rights to a questioning conducted under an informal inquiry. However, some provisions of the Firefighters' Bill of Rights still do not apply to a questioning conducted under an informal inquiry. Specifically, since a formal investigation has not been opened on a firefighter under informal inquiry, the firefighter cannot be informed of the

²³ "Employing agency" means any municipality or the state or any political subdivision thereof, including authorities and special districts, which employs firefighters. Section 112.81(2), F.S.

²⁴ "Informal inquiry" means a meeting by supervisory or management personnel with a firefighter about whom an allegation of misconduct has come to the attention of such supervisory or management personnel, the purpose of which meeting is to mediate a complaint or discuss the facts to determine whether a formal investigation should be commenced. Section 112.81(3), F.S.

²⁵ "Formal investigation" means the process of investigation ordered by supervisory personnel, after the supervisory personnel have previously determined that the firefighter must be reprimanded, suspended, or removed, during which the questioning of a firefighter is conducted for the purpose of gathering evidence of misconduct. Section 112.81(4), F.S.

²⁶ "Interrogation" means the questioning of a firefighter by an employing agency in connection with a formal investigation or an administrative proceeding but does not include arbitration or civil service proceedings. Questioning pursuant to an informal inquiry may not be deemed to be an interrogation. Section 112.81, F.S. "Administrative proceeding" means any nonjudicial hearing that may result in the recommendation, approval, or order of disciplinary action against, or suspension or discharge of, a firefighter. Section 112.81(5), F.S.

²⁷ Section 112.82(2), F.S.

²⁸ Section 112.82(1), F.S.

²⁹ Section 112.82(5) and (3).

³⁰ Section 112.82(4) and (6).

³¹ Section 112.82(8), F.S.

³² *Id.*

³³ Section 112.82(9), F.S.

³⁴ Section 112.83, F.S.

nature of the formal investigation before questioning, and cannot be informed of the head investigator's or interrogator's credentials. Additionally, the bill does not require the firefighter to be informed of the identities of all complainants, specify where or when the informal inquiry must take place, require an informal inquiry to take place at a reasonable time of day, or require a complete record of the informal inquiry to be made. Otherwise, the bill extends the protections afforded under the Firefighters' Bill of Rights to firefighters under informal inquiry.

The bill requires an informal inquiry of a firefighter to:

- Be of reasonable duration with permitted periods for rest and personal necessities; and
- Not subject the firefighter to offensive language or offer any incentive as an inducement to answer any questions.

The bill provides that during an informal inquiry or interrogation, a firefighter may not be threatened with a transfer, suspension, dismissal, or other disciplinary action. The bill authorizes an employee organization to represent any member of a bargaining unit desiring such representation in an informal inquiry.

Additionally, the bill provides that a firefighter under informal inquiry may not be discharged, disciplined, demoted, denied promotion or seniority, transferred, reassigned, or otherwise disciplined or discriminated against, or threatened with such action solely for exercising the aforementioned rights.

The bill specifies that an informal inquiry does not include routine work-related discussions, such as safety sessions or normal operational fire debriefings.

B. SECTION DIRECTORY:

Section 1 amends s. 112.81, F.S., to specify that an informal inquiry does not include routine work-related discussions, such as safety sessions or normal operational fire debriefings.

Section 2 amends s. 112.82, F.S., to extend certain provisions of the Firefighters' Bill of Rights to questioning conducted under an informal inquiry.

Section 3 provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may require the employing agency to amend its internal policies and procedures, which will likely be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may require the employing agency to amend its internal policies and procedures, which will likely be absorbed within existing resources.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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 action requiring the expenditures of funds; reduce the authority that counties and municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not require rulemaking nor confer rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 18, 2021, the Government Operations Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removed certain provisions of the Firefighters' Bill of Rights that were extended under the original bill to questioning conducted under an informal inquiry. Specifically, the amendment did not require an informal inquiry to:

- Take place where management or supervisory personnel are assigned; or
- Be conducted at a reasonable time of day.

Additionally, the amendment authorized an employee organization representative to be present during any informal inquiry, formal investigation, or interrogation regardless of whether a collective bargaining agreement provides for the representative's presence.

On March 17, 2021, the State Affairs Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment reverted a provision of the bill to current law, which authorizes an employee organization representative to be present during any investigation or interrogation if a collective bargaining agreement provides for the representative's presence. By reverting to current law, an employee organization may represent any member of a bargaining unit desiring representation in any proceeding to which the Firefighters' Bill of Rights apply, which, under this bill, includes informal inquiries.

This analysis is drafted to the committee substitute as passed by the State Affairs Committee.