

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: SB 264

INTRODUCER: Senator Hooper

SUBJECT: Firefighter Inquiries and Investigations

DATE: January 25, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hunter</u>	<u>Ryon</u>	<u>CA</u>	Favorable
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 264 amends the Firefighters’ Bill of Rights, which provides specific rights to a firefighter under investigation and when subject to interrogation for alleged misconduct that could lead to disciplinary action. The bill expands the rights given to a firefighter during questioning conducted under an informal inquiry. Currently, questioning pursuant to an informal inquiry is not subject to the Firefighters’ Bill of Rights.

The bill requires that an informal inquiry be conducted at a reasonable time and for a reasonable duration, allowing reasonable periods of rest for the firefighter. Additionally, during an informal inquiry or interrogation a firefighter may not be threatened with transfer, suspension, dismissal, or disciplinary action as inducement to answer any questions.

The bill revises the definition of the term “informal inquiry” to exclude certain routine work-related discussions such as safety sessions or normal operational fire debriefings.

The bill is not expected to impact state and local government revenues and expenditures.

The bill takes effect on July 1, 2022.

II. Present Situation:

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).¹ Under 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 firesafety inspections of state buildings;⁶
- Develops firesafety standards;⁷
- Provides facilities for the analysis of fire debris;⁸ and
- Operates the Florida State Fire College.⁹

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.¹⁰

Firefighters' Bill of Rights

The Firefighters' Bill of Rights provides specific rights when a firefighter¹¹ is under investigation and subject to interrogation for a reason which could lead to disciplinary action, including reprimand, suspension, or dismissal.¹² There is a similar law for law enforcement and correctional officers known as the Law Enforcement Officers' Bill of Rights.¹³

Currently, when an employing agency¹⁴ receives an allegation of misconduct regarding a firefighter, management may conduct an informal inquiry¹⁵ to determine whether a formal

¹ 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.

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 633.432, F.S.

⁹ Section 633.128(1)(h)–(q), F.S. *See also* ss. 633.428–633.434, F.S.

¹⁰ Section 633.202(1), F.S.

¹¹ “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.

¹² Part VIII, ch. 112, F.S.

¹³ Part VI, ch. 112, F.S.

¹⁴ “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.

¹⁵ “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.

investigation¹⁶ is appropriate. Informal inquiries are not subject to the requirements of the Firefighters' Bill of Rights. Only after a formal investigation has begun do the requirements have effect.¹⁷

Under the Firefighters' Bill of Rights, an interrogation of a firefighter must be conducted according to the following terms:¹⁸

- The interrogation shall take place at the facility where the investigating officer is assigned or at the facility that has jurisdiction over the place where the incident under investigation allegedly occurred, as designated by the investigating officer.
- No firefighter shall be subjected to interrogation without first receiving written notice in sufficient detail of the investigation to reasonably apprise the firefighter of the nature of the investigation. The firefighter shall be informed beforehand of the names of all complainants.
- All interrogations shall be conducted at a reasonable time of day, preferably when the firefighter is on duty unless the importance of the interrogation or investigation is of such a nature that immediate action is required.
- The firefighter under investigation shall be informed of the name, rank, and unit or command of the officer in charge of the investigation, the interrogators, and all persons present during any interrogation.
- Interrogation sessions shall be of reasonable duration, and the firefighter shall be permitted reasonable periods for rest and personal necessities.
- The firefighter being interrogated shall not be subjected to offensive language or offered any incentive as an inducement to answer any questions.
- A complete record of any interrogation shall be made, and if a transcript of such interrogation is made, the firefighter under investigation shall be entitled to a copy without charge. Such records may be electronically recorded.
- An employee or officer of an employing agency may represent the agency, and an employee organization may represent any member of a bargaining unit desiring such representation in any proceeding to which this part applies. If a collective bargaining agreement provides for the presence of a representative of the collective bargaining unit during investigations or interrogations, such representative shall be allowed to be present.
- No firefighter shall be discharged, disciplined, demoted, denied promotion or seniority, transferred, reassigned, or otherwise disciplined or discriminated against in regard to his or her employment, or be threatened with any such treatment as retaliation for or by reason solely of his or her exercise of any of the rights granted or protected by this part.

III. Effect of Proposed Changes:

Section 1 amends s. 112.81, F.S., to revise the definitions of “informal inquiry” and “formal investigation.” “Informal inquiry” is revised to exclude certain discussions between supervisory

¹⁶ “Formal investigation” means the process of an investigation ordered by supervisory personnel, after the supervisory personnel has previously determined that the firefighter shall be reprimanded, suspended, or removed, during which the questioning of a firefighter is conducted to gather evidence of misconduct. 112.81(4), F.S.

¹⁷ “Interrogation” means the questioning of a firefighter by an employing agency in connection with a formal investigation or an administrative proceeding but shall not include arbitration or civil service proceedings. Questioning during an informal inquiry shall not be deemed an interrogation. 112.81(6), F.S.

¹⁸ Section 112.82, F.S.

and management personnel and firefighters, such as safety sessions, normal operational fire debriefings, and routine work-related discussions.

The term “formal investigation” is revised to mean an investigation undertaken to determine if a firefighter should be disciplined, reprimanded, suspended, or removed. Management personnel as well as supervisory personnel may initiate a formal investigation.

Section 2 amends s. 112.82, F.S., to expand the rights given to a firefighter during questioning conducted under an informal inquiry. Namely, the following requirements are applied to an informal inquiry:

- It must be conducted at a reasonable time of day, preferably when the firefighter is on duty; and
- It must be conducted for a reasonable duration and the firefighter must be permitted reasonable periods for rest.

The bill further provides that during an informal inquiry or interrogation a firefighter may not be threatened with transfer, suspension, dismissal, or disciplinary action as inducement to answer any questions.

Section 3 provides that the bill takes effect July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 112.81 and 112.82 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.