

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 31 Firefighter Inquiries and Investigations

**SPONSOR(S):** Busatta Cabrera

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 264

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

### SUMMARY ANALYSIS

The Firefighters' Bill of Rights provides specific rights for a firefighter who is under formal investigation and subject to interrogation for a reason that could lead to disciplinary action. However, the Firefighters' Bill of Rights does not apply to questioning during an informal inquiry into an instance of alleged misconduct of a firefighter. Whenever an employing agency receives an allegation of misconduct, management personnel first conduct an informal inquiry to determine if a formal investigation should be opened against the firefighter. 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.

HB 31 extends certain provisions of the Firefighters' Bill of Rights to questioning conducted under an informal inquiry. The bill extends certain protections required by the Firefighter's Bill Of Rights for a formal inquiry to a firefighter during an informal inquiry. Under the bill, an informal inquiry must:

- 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 any 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 rights under the Firefighters' Bill of Rights.

The bill provides that a "formal investigation" means the process of investigation ordered by supervisory or management personnel to determine if a firefighter should be disciplined as opposed to occurring after the supervisory personnel have determined that discipline is appropriate. In addition, 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 an insignificant fiscal impact on state and local governments.

The bill has an effective date of July 1, 2022.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

The Firefighters' Bill of Rights provides specific rights for a firefighter<sup>1</sup> who is under investigation and subject to interrogation.<sup>2</sup> There is a similar law for law enforcement and correctional officers known as the Law Enforcement Officers' Bill of Rights.<sup>3</sup>

Currently, whenever an employing agency<sup>4</sup> receives an allegation of misconduct regarding one of its firefighters, management personnel may conduct an informal inquiry<sup>5</sup> to determine whether a formal investigation<sup>6</sup> 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 interrogation<sup>7</sup> 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 receive written notice informing him or her of the nature of the investigation, and must also be informed of all complainants' identities.<sup>8</sup> The interrogation must take place either where the investigating officer is assigned or in the jurisdiction where the alleged misconduct occurred.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup> During the interrogation, the firefighter may be represented by an employee organization if he or she is a member of a bargaining unit and desires such representation.<sup>12</sup> If a collective bargaining agreement provides for a representative of the bargaining unit to be present during any investigation or interrogation, such representative must be

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<sup>1</sup> The term "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.

<sup>2</sup> Chapter 112, Part VIII, F.S.

<sup>3</sup> Chapter 112, Part VI, F.S.

<sup>4</sup> The term "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.

<sup>5</sup> The term "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.

<sup>6</sup> The term "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.

<sup>7</sup> The term "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(6), F.S. The term "administrative proceeding" means any non-judicial 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.

<sup>8</sup> Section 112.82(2), F.S.

<sup>9</sup> Section 112.82(1), F.S.

<sup>10</sup> Section 112.82(5) and (3).

<sup>11</sup> Section 112.82(4) and (6).

<sup>12</sup> Section 112.82(8), F.S.

allowed to attend.<sup>13</sup> 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.<sup>14</sup>

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.<sup>15</sup> 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.<sup>16</sup>

### **Effect of the Bill**

HB 31 extends some of the rights enumerated in the Firefighters' Bill of Rights to 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 an informal inquiry, the firefighter cannot be informed of the 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.

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 provides that a "formal investigation" means the process of investigation ordered by supervisory or management personnel to determine if a firefighter should be disciplined as opposed to occurring after the supervisory personnel have determined that discipline is appropriate. Lastly, 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 provides an effective date of July 1, 2022.

### **B. SECTION DIRECTORY:**

Section 1 amends s. 112.81, F.S., relating to definitions applicable to the Firefighters' Bill of Rights.

Section 2 amends s. 112.82, F.S., relating to the rights of firefighters.

Section 3 provides an effective date of July 1, 2022.

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<sup>13</sup> *Id.*

<sup>14</sup> Section 112.82(7), F.S.

<sup>15</sup> Section 112.82(9), F.S.

<sup>16</sup> Section 112.83, F.S.

## 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 or alter an agency's rulemaking authority.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.