

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1408

SPONSOR: Banking and Insurance Committee, Senators Posey and Smith

SUBJECT: Firefighter Employment Safety

DATE: February 22, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	<u>Cooper</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable</u>
3.	_____	_____	<u>AGG</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute creates the “Florida Firefighters Occupational Safety and Health Act.” These provisions were substantially the same as the repealed provisions formerly in chapter 442, F.S., related to the Division of Safety within the Department of Labor and Employment Security, except that the provisions in this bill are limited to firefighter safety and would be placed under the authority of the Division of State Fire Marshal of the Department of Insurance (department). The bill takes the language formerly found in chapter 442, F.S., and places that language in chapter 633, F.S. with certain revisions.

This bill:

1. Authorizes the Division of State Fire Marshal to adopt rules regarding firefighter workplace safety;
2. Requires the division to study firefighter occupational diseases and the control and prevention of such diseases, and to study and investigate safety provisions;
3. Requires the division to make recommendations regarding prevention of firefighter injuries;
4. Provides requirements for firefighter employers to meet in order to provide a safe place of employment;
5. Revises definition of firefighter employer to exclude employers appointed by the Division of Forestry of the Department of Agriculture and Consumer Services;
6. Allows firefighter employers to submit their own safety and health program to the division for approval, in lieu of using the program developed by the division. The division must review the program submitted, and approve or disapprove such program within 60 days or such program would be deemed approved;
7. Provides regulations regarding workplace safety committees;

8. Provides penalties for violations of certain division rules;
9. Changes the name of the Firefighters Standards and Training Council to the Firefighters Employment, Standards, and Training Council and creates additional duties for the council; and
10. Provides a declaration of important state interest.

This bill creates the following sections of the Florida Statutes: 633.801, 633.802, 633.803, 633.804, 633.805, 633.806, 633.807, 633.808, 633.809, 633.810, 633.811, 633.812, 633.813, 633.814, 633.815, 633.816, 633.817, 633.818, 633.819, 633.820, and 633.821. The bill substantially amends the following sections of the Florida Statutes: 383.3362, 633.330, 633.31, and 633.32, and 633.33.

II. Present Situation:

In 1993, Senate Bill 12-C passed and became law as chapter 93-415, L.O.F., which in part, created the “Florida Occupational Safety and Health Act.” The Act intended to enhance occupational safety and health through the implementation and maintenance of policies, procedures, practices, rules, and standards designed to reduce the incidence of employee accidents, occupational diseases, and fatalities for employees of the state and all political subdivisions, all public and quasi-public corporations, and private corporations. Rulemaking authority was provided to the Division of Safety within the Department of Labor and Employment Security to implement the act’s provisions.

In 1999, Senate Bill 230 passed and became law as ch. 99-240, L.O.F. The act repealed the Florida Occupational Safety and Health Act and also abolished the Division of Safety as of July 1, 2000. Accordingly, the rules adopted by the Division of Safety relating to the Florida Occupational Safety and Health Act became invalid. Firefighters and their employers were among those covered under this act. In general, firefighters are regulated under ch. 633, F.S., which is administered by the Division of State Fire Marshal of the Department of Insurance.

Under federal law, the Occupational Safety and Health Act provides for the adoption and enforcement of safety and health standards in the workplace. The federal Act applies to all 50 states and requires employers to provide a place of employment that is free from hazards that could cause death or injury to employees. As defined in the Act, an “employer” is any person engaged in a business affecting commerce who has employees, but does not include the United States or any State or political subdivision of a State.” Therefore, the Act generally covers private employers only.

III. Effect of Proposed Changes:

The bill creates the Florida Firefighters Occupational Safety and Health Act in ss. 633.801 through 633.825, F.S. These provisions are substantially the same as provisions formerly in ch. 442, F.S., repealed effective July 1, 2000, related to the Division of Safety within the Department of Labor and Employment Security. However, the provisions in the bill are limited to firefighter safety and would be placed under the Division of State Fire Marshal within the Department of Insurance.

Section 1. Creates s. 633.801, F.S.-- Designates ss. 633.801 through 633.821, F.S., as the “Florida Firefighters Occupational Safety and Health Act” (FFOSHA).

Creates s. 633.802, F.S. -- Defines the terms department, division, firefighter employee, firefighter employer, firefighter employment or employment, and firefighter place of employment or place of employment.

“Firefighter employee” is defined as any person engaged in any employment, public or private, as a firefighter under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, responding to or assisting with fire or medical emergencies, whether or not the firefighter is on duty. The definition of firefighter employee excludes individuals appointed by the Division of Forestry of the Department of Agriculture and Consumer Services.

The Division of State Fire Marshal has indicated that there are circumstances in which a firefighter employee might be “unlawfully employed.” If a firefighter allows his or her state certification for firefighting to lapse, and the firefighter is then employed in firefighter employment, then the firefighter is considered “unlawfully employed.” The firefighter must then renew his or her state certification.

The definition also refers to firefighters “whether or not the firefighter is on duty.” That phrase is a part of the “firefighter employee” definition because a firefighter is always considered “on duty,” unless out of town, due to the fact that a firefighter can always be called “to duty” even if that firefighter has the day off from work. A “volunteer firefighter” is not included in the definition of “firefighter employee.”

“Firefighter employer” is defined as the state and all political subdivisions of this state, all public and quasi-public corporations in this state, and every person carrying on any employment for this state, political subdivision of this state, and public and quasi-public corporations in this state, which employs firefighters. The definition of “firefighter employer” does not include an employer who hires a firefighter for purposes other than firefighting or individuals appointed by the Division of Forestry of the Department of Agriculture and Consumer Services.

Creates s. 633.803, F.S. -- Provides legislative intent language specifically for firefighters and firefighter employers. The section provides that it is the intent to enhance firefighter occupational safety and health in the state by adopting policies, procedures, and rules that reduce the incidence of accidents, firefighter occupational diseases, and firefighter fatalities compensable under chapter 440 or otherwise.

Creates s. 633.804, F.S. -- Requires the division to adopt rules governing the “manner, means, and frequency” of fire employer and employee safety inspections and consultations conducted by insurers and self-insurers.

Creates s. 633.805, F.S. -- Requires the division to make a “continuous” study of firefighter occupational diseases and the ways and means for the control and prevention of such diseases. Authorizes the division to adopt rules necessary for such control and prevention.

Creates s. 633.806, F.S. -- Requires the division to make studies and investigations regarding safety provisions in addition to the causes of firefighter injuries in firefighter places of employment.

Requires the division to make recommendations to the Legislature, firefighter employers, and insurers regarding the best means of preventing firefighter injuries. Allows the division to adopt rules regarding procedures for conducting investigations of firefighter employers.

Creates s. 633.807, F.S. -- Requires every firefighter employer to furnish and use safety devices and adopt and use processes reasonably adequate to render such employment and place of employment safe for the protection of the firefighters. Provides requirements for a firefighter employer to meet in order to provide safe places of employment for the firefighter employee.

Creates s. 633.808, F.S. -- Provides authority for the division to:

1. Investigate and “prescribe by rule” safety devices, safeguards, and other means of protection that must be adopted for the prevention of workplace accidents, and to determine those devices, safeguards, and other means of protection that are suitable;
2. Order reasonable standards and rules for construction, repair, and maintenance of firefighter places of employment;
3. Assist firefighter employers in the development and implementation of safety training programs by contracting with “professional safety organizations;” and
4. Adopt rules prescribing record keeping requirements.

Creates s. 633.809, F.S. -- Provides for identification of firefighter employers with a high degree of work-related injuries. Authorizes the division to develop means and methods to identify and reduce work-related injuries. The section allows firefighter employers to submit their own safety and health program to the division, for division approval. The division must review the program submitted, and approve or disapprove such program within 60 days or such program would be deemed approved. Requires the division to adopt rules setting forth the criteria for safety and health programs.

Creates s. 633.810, F.S. -- Requires a firefighter employer who employs 20 or more firefighter employees to establish workplace safety committees. In addition, a firefighter employer who employs fewer than 20 firefighter employees must establish such a committee or designate a workplace safety coordinator *if* the division determines that such employer has a high frequency or severity of work-related injuries. Authorizes the division to adopt rules governing the membership of workplace safety committees and the meetings of those committees. The composition, selection, and function of such committees must be a topic of negotiation for those employers operating under a collective bargaining agreement. Requires that firefighter employees be compensated their regular hourly wage while participating in workplace safety committees or workplace safety coordinator training, meetings, or other such duties.

Creates s. 633.811, F.S.--Establishes penalties for firefighter employers who fail to or refuse to comply with the FFOSHA or any rule adopted pursuant to the FFOSHA. The division may assess against the firefighter employer a civil penalty of not less than \$100 and not more than \$5,000 for each day the violation continues after the firefighter employer has been given notice

of such violation. The total penalty for each violation may not exceed \$50,000. Penalties assessed and collected must be deposited in the Insurance Commissioner's Regulatory Trust Fund. Requires a hearing to be held in the county in which the violation, omission, failure, or refusal is alleged to have occurred. Authorizes the division to adopt rules requiring penalties commensurate with the frequency or severity of safety violations.

Creates s. 633.812, F.S. --Requires the division to cooperate with the federal government in order to avoid duplicate inspections and to ensure safe places of firefighter employment. Provides exceptions to the division requirements for private firefighter employers who meet certain specifications.

Creates s. 633.813, F.S. --Permits an insurer to cancel coverage of any firefighter employer who has been found by the division to have a high frequency or severity of work-related injuries and fails to implement a safety and health program.

Creates s. 633.814, F.S. --Requires the Insurance Commissioner's Regulatory Trust Fund (trust fund) to disburse the necessary amounts needed to administer the FFOSHA.

Creates s. 633.815, F.S. --Permits the division and authorized representatives of the division to enter and inspect firefighter places of employment at any reasonable time. Establishes a second-degree misdemeanor penalty for refusal to admit such persons for inspection purposes.

Creates s. 633.816, F.S. --Requires firefighter employees and firefighter employers to comply with the rules adopted by the division. A firefighter employer may not discharge, threaten to discharge, or cause a firefighter employee to be discharged, intimidated, coerced, or disciplined for certain reasons.

Creates s. 633.817, F.S. --Permits the division to seek remedies regarding firefighter employers or insurers who fail to comply with the FFOSHA and rules adopted pursuant to the FFOSHA.

Creates s. 633.818, F.S. --Provides that a firefighter employer who makes a false statement to an insurer or falsifies a document submitted to an insurer is guilty of a misdemeanor of the second degree.

Creates s. 633.819, F.S. -- Provides a second-degree misdemeanor penalty for any person who knowingly and willfully falsifies or conceals any material fact. Provides a statute of limitations of 5 years after the date the act was committed or 5 years after the date the act was discovered, if not discovered within 30 days.

Creates s. 633.820, F.S. --Provides that the FFOSHA applies to volunteer firefighters and volunteer fire departments.

Creates s. 633.821, F.S.-- Authorizes the division to adopt rules for the purpose of ensuring safe working conditions for all firefighter employees by:

1. Enforcing effective standards;
2. Assisting and encouraging firefighter employers to maintain safe working conditions; and

3. Providing for education and training in the field of safety.

The division may adopt by rule subparts C through T and subpart Z of 29 Code of Federal Regulations (C.F.R.) s. 1910;¹ Standard 1500, paragraphs five through seven (Personal Alert Safety System) of the National Fire Protection Association, Inc. (NFPA); and American National Standards Institute (ANSI) A 10.4-1990 (relating to personnel hoists and employee elevators).

With regard to 29 C.F.R. s. 1910.134(g)(4),² the bill provides that the two individuals located outside the “immediately dangerous to life and health atmosphere” may be assigned to an additional role so long as those individuals are able to “immediately perform assistance or rescue activities without jeopardizing the safety or health of any firefighter working at an incident.” This is commonly referred to as 2-in 2-out. Such role may include incident commander, pumper operator, engineer, or driver.

Each county, municipality, and special district must implement such provision by April 1, 2002, except as otherwise provided. The exception applies to a county, municipality, or special district that is unable to implement such provision by April 1, 2002, without adding additional personnel to its firefighting staff or expending significant additional funds. That county, municipality, or special district will have an additional 6 months within which to implement such provision. If that county, municipality, or special district decides to implement the 6-month extension, then that county, municipality, or special district must notify the division of that decision within 30 days after its decision to extend the time.

After the extension, if that county, municipality, or special district is still unable to implement such provisions without adding additional personnel to its firefighting staff or expending significant additional funds, such county, municipality, or special district will be exempt from the requirements of 29 C.F.R. s. 1910.134(g)(4), subject to annual review by the division. If the division determines that any county, municipality, or special district has the ability to implement such provision without adding additional personnel to its firefighting staff or expending significant additional funds, the division must require such county, municipality, or special district to implement such provision. Such requirement by the division constitutes final agency action subject to chapter 120, the Administrative Procedures Act.

¹ 29 Code of Federal Regulations (C.F.R.) s. 1910 pertains to hazardous waste operations and emergency response regarding firefighters.

² 29 C.F.R. s. 1910.134(g)(4) provides procedures for interior structural firefighting. The section requires the employer to ensure that:

- (i) At least two employees enter the “immediately dangerous to life or health” (IDLH) atmosphere and remain in visual or voice contact with one another at all times;
- (ii) At least two employees are located outside the IDLH atmosphere; and
- (iii) All employees engaged in interior structural firefighting use self-contained breathing apparatuses (SCBA).

An IDLH means “an atmospheric concentration of any toxic, corrosive, or asphyxiant substance that poses an immediate threat to life or would interfere with an individual’s ability to escape from a dangerous atmosphere.” (29 C.F.R. s. 1910.120(a)(3)) An SCBA means “an atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.” (29 C.F.R. s. 1910.134(a)(2)(b)).

The division may adopt any rule necessary to implement, interpret, and make specific such provisions. The division may not adopt by rule any other standard or standards of the Occupational Safety and Health Administration or the National Fire Protection Association relating to ss. 633.801 through 633.821, F.S., and firefighter employment safety, without specific legislative authority.

Section 2. Amends s. 633.31, F.S., to change the name of the Firefighters Standards and Training Council to the Firefighters Employment, Standards, and Training Council, expands the membership on the council from 9 members to 13 members, and revises the appointment process. The two members would be appointed by the Florida Fire Chiefs Association, two members would be appointed by the Florida Professional Firefighters Association, five members would be appointed by the State Fire Marshal, the Florida League of Cities, the Florida Association of Counties, the Florida Association of Special Districts, and the Florida Fire Marshal Association would appoint one member each. Currently, the State Fire Marshal appoints all nine members.

Section 3. Amends s. 633.33, F.S., to create additional duties for the Firefighters Employment, Standards, and Training Council.

Section 4. Amends s. 383.3362, F.S., to provide conforming changes.

Section 5. Amends s. 633.30, F.S., to provide conforming changes.

Section 6. Amends s. 633.32, F.S., to provide conforming changes.

Section 7. Provides a declaration of important state interest.

Section 8. Provides an effective date of upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18(a), Art. VII of the State Constitution provides that no county or municipality is bound by any general law requiring the county or municipality to spend funds or to take an action requiring the expenditure of funds unless certain exemptions or exceptions apply.

One of the exceptions from subsection (a) is if the Legislature determines that the bill fulfills an important state interest and similarly situated persons are all required to comply. Since the provisions of the bill apply to special district firefighter employers, as well as county and city employers, and the bill contains a finding of important state interest, the bill appears to be excepted from Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

As a result of the implementation of safety and health programs for firefighters, fewer firefighter injuries and deaths and fewer workers' compensation claims would be anticipated.

C. Government Sector Impact:

The Department of Insurance has determined that an additional seven positions (fire inspectors) will need to be created in order to ensure that firefighter employers are complying with the provisions of this bill, and subsequent rules adopted. Expenditures are not anticipated during the first year of implementation (FY 2001-02) due to the time required to develop the implementation protocols. This process would extend 6 months into the second year. Full fiscal year expenditures are not anticipated until FY 2002-03. The following expenditures are the costs associated with those seven positions:

Insurance Commissioner's Regulatory Trust Fund

Nonrecurring Expenses	2001-02	2002-03	2003-04
Expense	\$ 0	\$ 21,427	\$ 0
OCO (7 FTE's)	\$ 0	\$ 10,500	\$ 0
Motor Vehicles	\$ 0	\$ 112,000	\$ 0
Recurring Expenses			
Salaries and Benefits (6 mos / FY 02- 03)	\$ 0	\$ 110,000	\$ 227,000
Expense (6mos / FY 02-03)	\$ 0	\$ 38,202	\$ 76,405
Total Impact to the Trust Fund	\$ 0	\$ 292,129	\$ 303,405

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
