

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 620

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Hooper

SUBJECT: Firefighters' Bill of Rights

DATE: January 14, 2020 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Paglialonga</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 620 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 revises the definition of the term "informal inquiry" to exclude certain routine work-related discussions. The bill requires all identifiable witnesses to be interviewed before the beginning of an interrogation of a firefighter, when possible, and specified information must be provided to the firefighter before an interrogation is conducted. The bill authorizes a firefighter to provide a voluntary statement any time after being informed of the right to review witness statements and prohibits a firefighter from being threatened with disciplinary action during an interrogation.

The bill requires that the firefighter be provided a copy of the interrogation within a specified time frame, upon request. A firefighter must be notified and provided certain information before disciplinary actions are taken and must be allowed to address the findings.

The bill provides firefighters most of the same rights under an informal inquiry as the firefighter has during an interrogation (reasonable time, place, and duration of questioning, and prohibition against offensive language and threats of disciplinary action). The primary differences in the rights provided are that all identifiable witnesses must be interviewed prior to an interrogation, certain documents must be made available to the firefighter prior to the interrogation, and an interrogation must be electronically recorded. The bill allows an informal inquiry to last no

longer than 72 hours after the allegation of misconduct is made, unless the firefighter voluntarily participates in the informal inquiry at the time period elapses.

State and local agencies employing firefighters may incur minimal costs in complying with the provisions of the bill.

The bill takes effect on July 1, 2020.

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

The Division consists of two bureaus: the Bureau of Fire Standards and Training (BFST) and the Bureau of Fire Prevention.¹¹ Last year the BFST processed and issued 6,514 firefighter certifications.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 Division's annual report.¹³

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 *See* Division of State Fire Marshal, available at: <https://www.myfloridacfo.com/Division/sfm/> (last visited on Nov. 7, 2019).

¹² *See* Division of State Fire Marshal, *Certification and Testing-About Us*, available at: <https://www.myfloridacfo.com/Division/SFM/BFST/Standards/default.htm> (last visited on Nov. 7, 2019).

¹³ *Id.*

Firefighters Employment, Standards, and Training Council

The Firefighters Employment, Standards, and Training Council (Council) is housed within the DFS and consists of 14 members.¹⁴ 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 provider¹⁵ for the specific purpose of training firefighter trainees, firefighters, and volunteer firefighters.
- 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 required by ch. 633, F.S.¹⁶

The Council may also make or support studies on any aspect of firefighting employment, education, and training or recruitment.¹⁷

Curriculum Requirements for Firefighters

A person applying for certification as a firefighter must:

- 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 perjury or false statements, a felony, 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;
- Have a good moral character;
- Be in good physical condition as determined by a medical examination; and
- Be a nonuser of tobacco or tobacco products for at least one year immediately preceding application.¹⁸

The Division is responsible for establishing a Minimum Standards Course as the training and educational curriculum required for a firefighter to obtain a Firefighter Certificate of Compliance (FCOC).¹⁹ The Division issues an FCOC 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 which has been determined by the Division to be at least the equivalent of the training required for the Minimum Standards Course;

¹⁴ Section 633.402(1), F.S.

¹⁵ Section 633.102(13), F.S., defines “fire service provider” as a municipality or county, the state, the division, or any political subdivision of the state, including authorities and special districts, that employs firefighters or uses volunteer firefighters to provide fire extinguishment or fire prevention services for the protection of life and property. The term includes any organization under contract or other agreement with such entity to provide such services.

¹⁶ Section 633.402(9), F.S.

¹⁷ *Id.*

¹⁸ Section 633.412, F.S.

¹⁹ Section 633.408(1)(a), F.S.

- 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.²⁰

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 years, and provide proof of such instruction to the division, which proof must be registered in an electronic database designated by the Division;
- Within six months before the four-year period expires, complete a Firefighter Retention Refresher Course consisting of a minimum of 40 hours of training to be prescribed by rule; and
- Within six months before the four-year period expires, successfully retake and pass the Minimum Standards Course examination.²¹

Firefighters' Bill of Rights

The Firefighters' Bill of Rights provides specific rights when a firefighter is under investigation and subject to interrogation for a reason which could lead to disciplinary action, including reprimand, suspension, or dismissal.²² There is a similar law for law enforcement and correctional officers known as the Law Enforcement Officers' Bill of Rights.²³

The Firefighters' Bill of Rights contains the following definitions:²⁴

- "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.
- "Employing agency" means any municipality or the state or any political subdivision thereof, including authorities and special districts, which employs firefighters.
- "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.
- "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.

²⁰ Section 633.408(4), F.S.

²¹ Section 633.414(1), F.S.

²² Part VIII, ch. 112, F.S.

²³ Part VI, ch. 112, F.S.

²⁴ Section 112.81, F.S.

- “Administrative proceeding” means any nonjudicial hearing which may result in the recommendation, approval, or order of disciplinary action against, or suspension or discharge of, a firefighter.
- “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 to be an interrogation.

An interrogation of a firefighter must be conducted according to the following terms:²⁵

- 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.

²⁵ Section 112.82, F.S.

Public Records Exemption for Agency Investigations of Employee Misconduct

Current law provides a public records exemption for agency²⁶ investigations into complaints of employee misconduct.²⁷ A complaint of misconduct filed with an agency against an agency employee and all information obtained during an investigation by the agency of the complaint of misconduct is confidential and exempt from public disclosure until the investigation ceases to be active, or until the agency provides written notice, either personally or by mail, to the employee who is the subject of the complaint that the agency has either:

- Concluded the investigation with a finding not to proceed with disciplinary action or file charges; or
- Concluded the investigation with a finding to proceed with disciplinary action or file charges.²⁸

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 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 include an investigation undertaken to determine whether a firefighter will be disciplined, reprimanded, suspended, or removed. A formal investigation may be initiated by management personnel as well as supervisory personnel.

Section 2 amends s. 112.82(1), F.S., to require that an informal inquiry be conducted at the facility where the investigating officer is assigned, or at the facility which has jurisdiction over the place where the incident under investigation allegedly took place.

Section 112.82(2), F.S., is amended to require all identifiable witnesses be interviewed before the beginning of an interrogation of a firefighter, when possible. The complaint, all witness statements, and all other existing evidence, including, but not limited to, incident reports, GPS locator information, and audio or video recordings relating to the incident under investigation, must be provided to each firefighter who is the subject of a complaint before he or she is interrogated. A firefighter may waive the rights provided under this section and provide a voluntary statement at any time after being informed of his or her right to review witness statements. These rights are not applicable to informal inquiries.

Sections 112.82(3) and (5), F.S., are amended to require informal inquiries to be conducted at a reasonable time of day and for a reasonable duration.

Section 112.82(4), F.S., is amended to require certain information about the officer in charge of an informal inquiry and the investigators to be provided to the firefighter subject to the inquiry.

²⁶ Section 119.011(2), F.S., defines “agency” as any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

²⁷ Section 119.071(2)(k), F.S.

²⁸ *Id.*

Section 112.82(6), F.S., is amended to prohibit a firefighter from being threatened with a transfer, dismissal, or disciplinary action during an interrogation or an informal inquiry.

Section 112.82(7), F.S., is amended to require a copy of the interrogation transcript, if made, be provided to a firefighter under investigation, upon request, without charge. If the firefighter requests a copy of the transcript, it must be provided within 72 hours, excluding weekends and holidays, after the interrogation.

Subsection (10) is added to s. 112.82, F.S., to require any informal inquiry to be conducted within 72 hours of the initial allegation of misconduct. Upon expiration of the 72 hour period, any meeting regarding the allegation is deemed an interrogation, and the firefighter must be afforded the rights granted for interrogations. The firefighter has the discretion to waive the rights granted by this section.

Section 3 creates s. 112.825, F.S., to provide additional protection to firefighters. A dismissal, demotion, transfer, reassignment, or other disciplinary action that might result in loss of pay or benefits or that might otherwise be considered a punitive measure may not be taken against a firefighter unless the firefighter is notified of the action and the reason for the action before the effective date of the action.

A firefighter who is subject to disciplinary action that consists of suspension with loss of pay, demotion, or dismissal, or his or her representative, must, upon request, be given a complete copy of the investigative file, including the final investigative report and all evidence, by the employing agency. The firefighter must be allowed to address the findings in the final investigative report with the employing agency before such disciplinary action is taken. The contents of the complaint and all information obtained during a subsequent investigation must remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution as provided under s. 119.071(2)(k), F.S.

Section 4 provides that the bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, subsection (a) of section 18 of the Florida Constitution provides that cities and counties are not bound by general laws requiring them to spend funds or take action that requires the expenditure of funds unless certain specified exemptions or exceptions are met.

Under this bill, cities and counties that employ firefighters may incur costs relating to the new notice rights afforded firefighters. However, the mandate requirements do not apply to laws having an insignificant impact, which, for Fiscal Year 2020-2021, is forecast at

slightly over \$2.1 million.^{29,30,31} The impact on government employers is expected to be minimal so the bill appears to be exempt from the mandates requirements.

If such costs are determined to exceed \$2.1 million, the bill may be binding on cities and counties if the bill contains a finding of important state interest and meets one of the exceptions specified in State Constitution (e.g., provision of funding or a funding mechanism, apply to all persons similarly situated (employers of firefighters), or enactment by vote of two-thirds of the membership of each house).

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:

An employing agency may need to amend its internal policies and procedures, which will likely be a minimal impact on its resources.

²⁹ FLA. CONST. art. VII, s. 18(d).

³⁰ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, Interim Report 2012-115: Insignificant Impact, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Dec. 20, 2019).

³¹ Based on the Florida Demographic Estimating Conference's December 3, 2019, population forecast for 2020 of 21,555,986. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Dec. 20, 2019).

An employing agency may incur some additional costs in providing the interrogation transcript and complete investigative file to the firefighter. These costs appear to be minimal.

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. This bill also creates section 112.825 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 Governmental Oversight and Accountability on January 13, 2020:

The CS retains the current distinction between an interrogation and an informal inquiry for the first 72 hours after an allegation of misconduct is made. However, during this 72-hour period, the firefighter has certain rights during the informal inquiry as the firefighter would have under an interrogation. The primary differences between the rights under during an informal inquiry and the rights under an interrogation are that all identifiable witnesses must be interviewed prior to an interrogation, certain documents must be made available to the firefighter prior to the interrogation, and an interrogation must be electronically recorded.

B. Amendments:

None.