

STORAGE NAME: h0135.fpr.doc

DATE: January 2, 2002

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FISCAL POLICY AND RESOURCES
ANALYSIS**

BILL #: HB 135

RELATING TO: Firefighter Employment Safety

SPONSOR(S): Representative(s) Bense, Benson, and Jennings

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) STATE ADMINISTRATION YEAS 4 NAYS 0
- (2) FISCAL POLICY AND RESOURCES
- (3) COUNCIL FOR SMARTER GOVERNMENT
- (4)
- (5)

I. SUMMARY:

This bill creates the "Florida Firefighters Occupational Safety and Health Act." These same provisions were contained in the "Florida Occupational Safety and Health Act," codified in chapter 442, F.S., prior to that act's repeal on July 1, 2000. The former act included all employees, not just firefighters. This bill takes the language formerly found in chapter 442, F.S., and places that language in chapter 633, F.S. The new language only applies to firefighter employers and firefighter employees.

This bill, in part,

- Authorizes the Division of State Fire Marshal to adopt rules regarding workplace safety. See "Rule-making Authority" for further details.
- Requires the division to study firefighter occupational diseases and the control and prevention of such diseases, and to study and investigate safety provisions.
- Requires the division to make recommendations regarding prevention of firefighter injuries.
- Provides requirements for firefighter employers to meet in order to provide a safe place of employment.
- Provides regulations regarding workplace safety committees.
- Provides civil and criminal penalties for violations of certain provisions and rules.
- Changes the name of the Firefighters Standards and Training Council to the Firefighters Employment, Standards, and Training Council.
- Creates additional duties for the council.
- Provides a declaration of important state interest.

This bill appears to have a fiscal impact on the Department of Insurance, although not substantial, and an indeterminable fiscal impact on local governments. See "Fiscal Analysis & Economic Impact Statement" for further details.

This bill requires cities and counties to take action requiring the expenditure of funds. The bill meets the exception to the mandate provision by providing a declaration of important state interest and because similarly situated persons are all required to comply. See "Applicability of the Mandates Provision" for further details.

On December 4, 2001, the Committee on State Administration reported the bill favorably with one amendment. See "Amendments or Committee Substitute Changes" for further details.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

The bill authorizes the Division of State Fire Marshal to adopt rules and regulations relating to firefighter safety in the workplace, and provides requirements that firefighter employers must meet when hiring firefighter employees for the purpose of fighting fires. Additionally, this bill makes it a misdemeanor of the second degree to violate certain portions of this act.

B. 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."¹ The "Florida Occupational Safety and Health Act" enhanced occupational safety and health through the implementation and maintenance of policies, procedures, practices, rules, and standards that were 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. The act gave rulemaking authority 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 chapter 99-240, L.O.F. The act repealed the Florida Occupational Safety and Health Act and also repealed the Division of Safety as of July 1, 2000.² Accordingly, the rules adopted by the Division of Safety relating to the Florida Occupational Safety and Health Act became invalid. Once those rules were invalidated, the Division of State Fire Marshal adopted emergency rules for firefighters and firefighter employers that were the same as the old rules.³ Once those emergency rules expired, the division began reworking and rewriting permanent rules.

During the 2001 legislative session, similar language contained in this bill was filed as a floor amendment⁴ to House Bill 1655. The amendment was adopted, but the bill died in returning messages on May 4, 2001.

¹ Sections 52 through 74 of chapter 93-415, L.O.F. (SB 12-C). The act was codified in chapter 442, F.S.

² Sections 14 and 2 of chapter 99-240, L.O.F. (SB 230).

³ Telephone conversation with Charles Clark, Director of the Division of State Fire Marshal, November 8, 2001.

⁴ Representatives Clark, Alexander, and Miller filed the floor amendment.

C. EFFECT OF PROPOSED CHANGES:

This bill creates ss. 633.801 through 633.821, F.S., known as the “Florida Firefighters Occupational Safety and Health Act.” These same provisions were contained in the “Florida Occupational Safety and Health Act,” codified in chapter 442, F.S., prior to that act’s repeal on July 1, 2000. The former act included all employees, not just firefighters. This bill takes the language formerly found in chapter 442, F.S., and places that language in chapter 633, F.S. The new language only applies to firefighter employers and firefighter employees.

See the “Section-by-Section Analysis” for further details.

D. SECTION-BY-SECTION ANALYSIS:

Section 1

Creates s. 633.801, F.S. (formerly s. 442.001, F.S.). Provides a short title for ss. 633.801 through 633.821, F.S. That short title is the “Florida Firefighters Occupational Safety and Health Act” (FFOSHA).

Creates s. 633.802, F.S. (formerly s. 442.002, 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*,⁵ responding to or assisting with fire or medical emergencies, whether or not the firefighter is on duty.

The Division of State Fire Marshal has stated 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.”⁶ The firefighter must then renew his or her state certification.⁷

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.⁸ A “volunteer firefighter” is not included in the definition of “firefighter employee.”

“Firefighter employer” is defined as

⁵ Emphasis added.

⁶ Telephone conversation with Charles Clark, Director of the Division of State Fire Marshal, November 8, 2001.

⁷ In order to receive state certification for firefighting, a person must pass both the written and practical minimum standards exam for state firefighter certification. A firefighter maintains certification by working as a firefighter. If a firefighter does not work as a firefighter for more than three years, then that firefighter’s certification expires. The firefighter must then repeat the certification process in order to receive recertification as a state firefighter. Telephone conversation with Charles Clark, Director of the Division of State Fire Marshal, November 8, 2001.

⁸ Telephone conversation with Charles Clark, Director of the Division of State Fire Marshal, November 8, 2001.

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.⁹

Creates s. 633.803, F.S. (formerly s. 442.003, F.S.). Provides legislative intent language specifically for firefighters and firefighter employers.

Creates s. 633.804, F.S. (formerly s. 442.004, 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.¹⁰

Creates s. 633.805, F.S. (formerly s. 442.005, 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. Requires the division to "make and enforce necessary regulations for such control." The division stated that the intent of the "regulations" language is to grant rulemaking authority to the division.¹¹ Chapter 120, F.S., the Administrative Procedure Act, requires that rulemaking authority be clearly and specifically stated. *This provision is appropriately amended in the sponsor's amendment.* Additionally, the section catchline reads: "Division to make study of firefighter occupational diseases, etc." The use of "etc." in the catchline is not a common bill drafting practice. *This too is corrected in the sponsor's amendment.*

Creates s. 633.806, F.S. (formerly s. 442.006, 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.

Provides that the division *may* allow certain agencies or departments "access to the records of the division." That statement implies that the division *may or may not* allow access to such records. Such records are public records and public access to the division's records is guaranteed by s. 24(a), Art. I of the State Constitution, and s. 119.07(1), F.S., unless otherwise made exempt by law. *This provision is deleted in the sponsor's amendment.*

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.

⁹ Meeting with Bob Carver and Randy Touchton of the Florida Professional Firefighters Association, October 29, 2001. Telephone conversation with Charles Clark, Director of the Division of State Fire Marshal, November 8, 2001.

¹⁰ Section 440.02(23), F.S., defines "self-insurer" as:

- (a) Any employer who has secured payment of compensation pursuant to s. 440.38(1)(b) or (6) as an individual self-insurer;
- (b) Any employer who has secured payment of compensation through a group self-insurance fund under s. 624.4621;
- (c) Any group self-insurance fund established under s. 624.4621;
- (d) A public utility as defined in s. 364.02 or s. 366.02 that has assumed by contract the liabilities of contractors or subcontractors pursuant to s. 440.571; or
- (e) Any local government self-insurance fund established under s. 624.4622.

¹¹ Telephone conversation with Charles Clark, Director of the Division of State Fire Marshal, November 8, 2001.

Creates s. 633.807, F.S. (formerly s. 442.007, F.S.). Requires every firefighter employer to “furnish to firefighters employment that is safe for the firefighter employees in such employment.” That language appears far-reaching. A firefighter employer cannot guarantee a firefighter employee safe employment when that employee must enter a burning building as part of the employee’s job responsibilities. *That provision is removed in the sponsor’s amendment.* 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. (formerly s. 442.008, F.S.). Provides authority for the division to:

- 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;
- Order reasonable standards and rules for construction, repair, and maintenance of firefighter places of employment;
- Assist firefighter employers in the development and implementation of safety training programs by contracting with “professional safety organizations”;¹² and
- Adopt rules prescribing record keeping requirements.

Creates s. 633.809, F.S. (formerly s. 442.0105, 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. Allows firefighter employers to submit their own safety and health program to the division, for division approval. The division must “promptly” review the program submitted, and approve or disapprove such program. It is unclear as to the amount of time allotted to the division for review of such programs.¹³ *The sponsor’s amendment addresses this concern.* Requires the division to adopt rules setting forth the criteria for safety and health programs.

Creates s. 633.810, F.S. (formerly s. 442.012, 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. (formerly s. 442.013, 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. 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

¹² Professional safety organizations include the National Organization of Firefighters, the National Safety Council, and the National Fire Protection Association. Meeting with Bob Carver and Randy Touchton of the Florida Professional Firefighters Association, October 29, 2001.

¹³ There are some sections of law that do not provide a time certain requirement. For example, s. 119.07(1)(a), F.S., provides that every person who has custody of a public record must permit such record to be inspected and examined by any person “at any reasonable time.”¹³ Although providing a time certain is not required, such practice is common. For example, s. 287.057(4)(c), F.S., provides that the Department of Management Services (DMS) has 21 days to approve or disapprove an agency’s certification of conditions and circumstances regarding a single source contract for commodities or contractual services with a vendor. DMS’ failure to “approve or disapprove the request of an agency for prior approval within 21 days after receiving such request or within 14 days after receiving from the agency additional materials requested by the department shall constitute prior approval of the department.”

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. (formerly s. 442.014, 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. The section catchline fails to adequately describe the content contained in that section. *The sponsor's amendment corrects the catchline.*

Creates s. 633.813, F.S. (formerly s. 442.015, 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. (formerly s. 442.016, F.S.). Requires the Insurance Commissioner's Regulatory Trust Fund (trust fund) to disburse the necessary amounts needed to administer the FFOSHA. The trust fund is partially funded by a certain percentage of fire and casualty insurance premiums.¹⁴

Creates s. 633.815, F.S. (formerly s. 442.017, F.S.). Permits the division and an authorized representative 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.¹⁵

Creates s. 633.816, F.S. (formerly s. 442.018, 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. (formerly s. 442.019, 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. (formerly s. 442.020, 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. (formerly s. 442.023, 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 five years after the date the act was committed or five 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. (formerly s. 442.20, F.S.). Authorizes the division to adopt rules for the purpose of ensuring safe working conditions for all firefighter employees by:

- Enforcing effective standards;
- Assisting and encouraging firefighter employers to maintain safe working conditions; and
- Providing for education and training in the field of safety.

¹⁴ Telephone conversation with Charles Clark, Director of the Division of State Fire Marshal, November 14, 2001.

¹⁵ Such penalty is punishable by a term of imprisonment not exceeding 60 days and a fine not to exceed \$500. Sections 775.082(4)(b) and 775.083(1)(e), F.S.

The division may adopt by rule subparts C through T and subpart Z of 29 Code of Federal Regulations (C.F.R.) s. 1910;¹⁶ Standard 1500, paragraphs five through seven (Personal Alert Safety System) of the National Fire Protection Association, Inc. (NFPA);¹⁷ and American National Standards Institute (ANSI) A 10.4-1990.¹⁸

With regard to 29 C.F.R. s. 1910.134(g)(4),¹⁹ 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

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

¹⁷ Standard 1500 of the NFPA pertains to the Personal Alert Safety System (PASS). The standard provides that each firefighter member must be provided with and must use a PASS device in a hazardous area. The PASS device must meet the requirements of NFPA 1982. Each PASS device must be tested weekly and prior to each use. Such device must be maintained in accordance with the manufacturer’s instructions.

¹⁸ ANSI A 10.4-1990 relates to personnel hoists and employee elevators. That provision provides that the maximum bottom hoist-car runby may be increased providing the top runby requirements of ANSI 10.5, 10.6, and 10.7 are met. ANSI 3 defines “bottom hoist-car runby” as “[t]he distance between the car buffer striker plate and the striking surface of the car buffer when the car floor is level with the bottom terminal landing.” ANSI 10.5 provides that the top clearance for counterweighted hoists must not be less than the sum of the following:

- (1) The bottom counterweight runby.
- (2) The stroke of the counterweight buffer used.
- (3) Two feet (0.61m) or the distance that any sheave or any other equipment mounted in or on the car crosshead projects above the top of the car crosshead, whichever is greater.
- (4) Where an oil buffer is used for the counterweight and no provision is made to prevent the sudden movement of the counterweight at car buffer engagement, add: (a) One-half the gravity stopping distance based on 115 percent of rated speed or (b) One-half the counterweight buffer stroke if a reduced-stroke buffer conforming to 14.3 is used. Where counterweight spring buffers are used, add one-half the gravity stopping distance based on governor-tripping speed.

ANSI 10.6.1 provides that the top car clearance for uncounterweighted hoists must not be less than 2 feet 6 inches (0.76m). ANSI 10.7 provides that the top counterweight clearance must not be less than the sum of the following:

- (1) The bottom car runby.
- (2) The stroke of the car buffer used.
- (3) Six inches (15.24cm).
- (4) Where an oil buffer is used for the car and no provision is made to prevent the sudden movement of the counterweight at car buffer engagement, add: (a) One-half the gravity stopping distance, based on 115 percent of rated speed or (b) One-half the car buffer stroke if a reduced-stroke buffer conforming to 14.3 is used. Where car spring buffers are used, add one-half the gravity stopping distance, based on governor-tripping speed.

¹⁹ 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)).

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 six months within which to implement such provision. If that county, municipality, or special district decides to implement the six 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).

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 NFPA 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. Changes the name of the Firefighters Standards and Training Council to the Firefighters Employment, Standards, and Training Council. Expands membership on the council from nine members to 13 members.

Section 3

Amends s. 633.33, F.S. Creates additional duties for the Firefighters Employment, Standards, and Training Council.

Section 4

Amends s. 383.3362, F.S. Makes conforming changes.

Section 5

Amends s. 633.30, F.S. Makes conforming changes.

Section 6

Amends s. 633.32, F.S. Makes conforming changes.

Section 7

Provides a declaration of important state interest.

Section 8

Provides an effective date of "upon becoming a law."

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of Insurance has determined that seven fire inspector positions will need to be created in order to ensure that firefighter employers are complying with the provisions of this bill, and subsequent rules adopted. The following expenditures are a result of those seven positions.

Type of Fund: Insurance Commissioner's Regulatory Trust Fund²⁰

	Amount Year 1 (FY 01 – 02)	Amount Year 2 (FY 02 – 03)	Amount Year 3 (FY 03 – 04)
FTE			
Salaries and Benefits	\$ 0		\$ 0
Expense	\$ 0	\$ 21,427	\$ 0
OCO (7 FTE's)	\$ 0	\$ 10,500	\$ 0
Motor Vehicles	\$ 0	\$ 112,000	\$ 0
Total Impact to the Fund	\$ 0	\$ 143,926	\$ 0

	Amount Year 1 (FY 01 – 02)	Amount Year 2 (FY 02 – 03)	Amount Year 3 (FY 03 – 04)
FTE	0	7	7
Salaries and Benefits (6mos / FY 02 – 03)	\$ 0	\$ 110,000	\$ 227,000
Expense (6mos / FY 02– 03)	\$ 0	\$ 38,202	\$ 76,405
OCO	\$ 0	\$ 0	\$ 0
Total Impact to the Fund	\$ 0	\$ 148,202	\$ 303,405

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminable.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the Department of Insurance, the direct private sector benefits are fewer firefighter injuries and deaths and fewer workers' compensation claims.²¹

²⁰ Department of Insurance Fiscal Analysis of HB 135, October 31, 2001, at 1, 2.

D. FISCAL COMMENTS:

Expenditures are not anticipated during the first year of implementation (FY 01 – 02) due to the time necessary to develop the implementation protocols. This process would extend six months into the second year. Full 12-month expenditures are not anticipated until Fiscal Year 2003 – 2004.²²

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

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 the legislature determines that the general law meets an exemption or an exception that would no longer require a two-thirds vote for passage of the bill.

This bill requires cities and counties to take action requiring the expenditure of funds. In order to meet one of the exceptions to the mandate provision, two things must occur. First, the legislature must determine that the legislation meets an important state interest, and second, the legislation must require all similarly situated persons to comply with its provisions. This bill qualifies as an exception because it provides a declaration of important state interest and similarly situated persons are all required to comply; *i.e.*, state firefighter employers, county and city firefighter employers, and private firefighter employers. Accordingly, a two third's vote by the legislature is not necessary to pass this bill. *However, the sponsor's amendment removes the declaration of important state interest.*

In order to meet one of the exemptions to the mandate provision, the bill must have an insignificant fiscal impact. The Florida Professional Firefighters Association asserts that this bill has an insignificant fiscal impact on firefighter employers, because firefighter employers are already following the standards provided for in this bill.²³ However, because the bill requires a great deal of rulemaking the fiscal impact of those rules cannot yet be evaluated.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This bill authorizes the division to adopt rules:

²¹ *Id* at 2.

²² *Id* at 3.

²³ Meeting with Bob Carver and Randy Touchton of the Florida Professional Firefighters Association, October 29, 2001.

- Governing the “manner, means, and frequency” of firefighter employer and employee safety inspections and consultations conducted by insurers and self-insurers.
- Making and enforcing necessary regulations for the ways and means for the control and prevention of firefighter occupation diseases.
- Adopting procedures for conducting investigations of firefighter employers.
- Preventing accidents.
- Providing safety, protection, and security of firefighters engaged in interior firefighting.
- Preventing occupational diseases.
- Ordering reasonable standards and rules for construction, repair, and maintenance of firefighter places of employment.
- Prescribing record keeping requirements.
- Setting forth the criteria for safety and health programs.
- Governing the membership of workplace safety committees and the meetings of those committees.
- Requiring penalties commensurate with the frequency or severity of safety violations.
- Ensuring safe working conditions for all firefighter employees.²⁴
- Implementing, interpreting, and making specific the provisions of s. 633.821, F.S., regarding workplace safety.

C. OTHER COMMENTS:

The Division of State Fire Marshal within the Department of Insurance, the Florida Association of Counties, the Florida Fire Chiefs’ Association, the Florida League of Cities, Inc., and the Florida Professional Firefighters Association has agreed to the amendment filed by the sponsor and adopted by the Committee on State Administration.

The Florida Public Employer Labor Relations Association does not oppose House Bill 135, but has concerns regarding the bill. The Association is concerned because the bill only covers firefighters and does not cover all other public employees.²⁵

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On December 4, 2001, the Committee on State Administration adopted one amendment to House Bill 135. That amendment makes technical changes, adds clarifying language, and removes unnecessary language. The amendment removes the declaration of important state interest. Additionally, the amendment requires the Division of State Fire Marshal to approve or disapprove a firefighter employer’s submitted safety and health program within 60 days or such program will be deemed approved.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Heather A. Williamson, M.S.W.

Staff Director:

J. Marleen Ahearn, Ph.D., J.D.

²⁴ The division may adopt by rule subparts C through T and subpart Z of 29 C.F.R. s. 1910; Standard 1500, paragraphs five through seven (Personal Alert Safety System) of the NFPA; and ANSI A 10.4-1990.

²⁵ Paul Piller representing the Florida Public Employer Labor Relations Association, public testimony at the meeting of the Committee on State Administration on December 4, 2001, regarding House Bill 135.

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AS REVISED BY THE COMMITTEE ON FISCAL POLICY AND RESOURCES:

Prepared by:

Staff Director:

Adam Shamy

Lynne Overton