

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 331 Firesafety

**SPONSOR(S):** Weinstein

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 534

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Thompson	Williamson
2) K-20 Competitiveness Subcommittee			
3) Rulemaking & Regulation Subcommittee			
4) Government Operations Appropriations Subcommittee			
5) State Affairs Committee			

### SUMMARY ANALYSIS

The bill clarifies the role of the State Fire Marshall in firesafety inspections of Florida's educational facilities, and streamlines the inspection and enforcement practices at the state and local levels. Specifically, the bill:

- Coordinates laws governing the State Fire Marshal with educational law governing firesafety inspections on educational property;
- Abolishes the classification of the special state firesafety inspector, leaves intact the classification of firesafety inspector, and provides for a contingent grandfathering of existing special state firesafety inspectors;
- Requires uniform firesafety standards and an alternate system to be governed by firesafety inspectors certified by the State Fire Marshal;
- Reduces the number of mandatory annual inspections at educational facilities from two to one, and provides for the inspection report to be distributed at the local level only;
- Clarifies the firesafety inspection process for charter schools and for public postsecondary institutions;
- Requires all public education boards to use only certified firesafety inspectors and other inspectors who have been certified by the State Fire Marshal in monitoring compliance with the Florida Building Code, the Florida Fire Prevention Code, and the State Requirements for Educational Facilities; and
- Requires a public education board to submit for approval the site plan for new construction to the local entity providing fire-protection services to the facility, and outlines the compliance process.

Reducing redundancy regarding firesafety inspections for Florida's education facilities may reduce related expenditures for state and local governments. See "Fiscal Analysis" for details.

The bill takes effect July 1, 2011.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Present Situation**

##### Division of the State Fire Marshal

The Chief Financial Officer, as the State Fire Marshal, operates through the Division of the State Fire Marshal (Division) within the Department of Financial Services (DFS) to implement and enforce state law on fire prevention and control. Pursuant to this authority, the State Fire Marshal regulates, trains and certifies fire service personnel; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; develops firesafety standards; provides facilities for the analysis of fire debris; and operates the Florida State Fire College.<sup>1</sup> Additionally, the State Fire Marshal adopts by rule the Florida Fire Prevention Code, which contains or references all firesafety laws and rules regarding public and private buildings.<sup>2</sup>

The Division consists of the following four bureaus: fire and arson investigations, fire standards and training, forensic fire and explosives analysis, and fire prevention. The Florida State Fire College, part of the Bureau of Fire Standards and Training, trains over 4,000 students per year. The Inspections Section, under the Bureau of Fire Prevention, annually inspects more than 14,000 state-owned buildings and facilities.<sup>3</sup> 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 State Fire Marshal's annual report.<sup>4</sup>

##### Firesafety Inspections of Florida's Educational Facilities

Safety requirements for educational facilities are provided in Chapter 1013, F.S. The State Fire Marshal is required to develop firesafety criteria for educational facilities in conjunction with the Florida Building Commission and the Department of Education.<sup>5, 6</sup>

Currently, public schools are required to be inspected by both the local fire official and the fire inspector for each school board.<sup>7</sup> Multiple inspections are duplicative and, as a consequence, may generate conflicting interpretations of code requirements and jurisdictional authority.

The State Fire Marshal is required to adopt and administer rules regarding health and safety standards for educational and ancillary facilities. Additionally, the State Fire Marshal must assume the duties of the local fire official for counties that do not employ or appoint an official.<sup>8</sup>

##### Firesafety Inspectors

Current law distinguishes between the different types of firesafety inspectors. A general "firesafety inspector" is defined as:

[A]n individual officially assigned the duties of conducting firesafety inspections of buildings and facilities on a recurring or regular basis on behalf of the state or any county, municipality, or special district....<sup>9</sup>

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<sup>1</sup> Section 633.01, F.S.

<sup>2</sup> Section 633.0215(1), F.S.

<sup>3</sup> Section 633.081, F.S.

<sup>4</sup> State Fire Marshal website: <http://www.myfloridacfo.com/sfm/index.htm> (last visited Mar. 22, 2011).

<sup>5</sup> Section 1013.37(1)(c), F.S.

<sup>6</sup> Chapter 633, F.S., governing the Division of the State Fire Marshall, does not contain similar language for the cooperative development of standards.

<sup>7</sup> Rule 69A-58.004(1), F.A.C.

<sup>8</sup> Section 633.01(7), F.S.

<sup>9</sup> Section 633.021(11), F.S.

A “special state firesafety inspector” is defined as:

[A]n individual officially assigned to the duties of conducting firesafety inspections required by law on behalf of or by an agency of the state having authority for inspections other than the Division of State Fire Marshal.<sup>10</sup>

A 2010 survey, by the State College of Florida, found a total of 44 special firesafety inspectors employed in the 67 school districts and 28 community colleges.<sup>11</sup> The current training requirement for this type of inspector is 120 hours, in contrast to the 200 hours of training required for full firesafety inspector status.<sup>12</sup> Every firesafety inspector or special state firesafety inspector certificate is valid for a period of 3 years from the date of issuance.<sup>13</sup>

#### Charter Schools

Charter schools are public schools that operate under a performance contract or charter with the local school board.<sup>14</sup> All charter schools in Florida are public schools.<sup>15</sup> The charter delineates unique requirements that the school must comply with in order to maintain charter status.<sup>16</sup> The law requires charter schools to meet annual inspection requirements of the Florida Fire Prevention Code, unless the charter adopts the State Requirements for Education Facilities.<sup>17</sup>

#### Annual Report on Firesafety

The State Fire Marshal is required to produce a statewide annual report on firesafety inspections of schools.<sup>18</sup> According to the DFS, this requires an annual compilation of district inspection reports into one format that documents the status of each board’s firesafety program. The law requires the report to be filed with the substantive committees of the House of Representatives and Senate having jurisdiction over education, the Commissioner of Education or his or her successor, the State Board of Education, the Board of Governors, and the Governor.<sup>19</sup>

### **Proposed Changes**

#### State Fire Marshal

The bill revises the powers and duties of the State Fire Marshal to require the State Fire Marshal to consult with the Department of Education regarding the adoption of rules pertaining to safety and health standards at educational facilities. In the event that a county does not employ or appoint a certified firesafety inspector, the bill requires the State Fire Marshal to take the place of the county, municipality, or independent special fire control district regarding firesafety inspections of educational property.

The bill deletes the requirement for the State Fire Marshal to compile each local report into one document for submission to the Legislature, Governor, Commissioner of Education, State Board of Education, and Board of Governors.

#### Firesafety Inspectors

The bill abolishes the classification of “special state firesafety inspector” as of July 1, 2013, with all certifications set to expire at midnight on June 30, 2013. The bill prohibits a special state firesafety inspector certificate from being issued after June 30, 2011. Special state firesafety inspectors may, however, be grandfathered in as full firesafety inspectors under the following conditions:

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<sup>10</sup> Section 633.021(24), F.S.

<sup>11</sup> Susan Lehr, Vice Associate Vice-President of Facilities Planning and Government Relations, State College of Florida, Bradenton, Education Facilities Fire Safety Legislation: Q and A (on file with the Government Operations Subcommittee).

<sup>12</sup> Section 633.081(2)(g) and (3), F.S.

<sup>13</sup> Section 633.081(5), F.S.

<sup>14</sup> Section 1002.33, F.S.

<sup>15</sup> *Id.*

<sup>16</sup> Section 1002.33(9), F.S.

<sup>17</sup> Section 1002.33(18)(a)-(b), F.S.

<sup>18</sup> Section 1013.12(8), F.S.

<sup>19</sup> *Id.*

- If the inspector has at least five years of experience as of July 1, 2011, and passes the firesafety inspection examination prior to July 1, 2013;
- If the inspector does not have five years of experience as a special state firesafety inspector as of July 1, 2011, but takes an additional 80 hours of courses and passes the examination prior to July 1, 2013; or
- If the inspector has at least five years of experience, fails the examination, but takes 80 additional hours of courses, retakes, and passes the examination prior to July 1, 2013.

The bill prohibits a person who fails the course of study or the examination from performing any firesafety inspections required by law on or after July 1, 2013.

The bill redefines the term “firesafety inspector” as a person who is certified by the State Fire Marshal, pursuant to s. 633.081, F.S. Consequently, the bill requires all administration and enforcement of uniform firesafety standards to be conducted by firesafety inspectors certified by the State Fire Marshal under s. 633.081, F.S.

#### Firesafety Inspections by District School Board

The bill requires a board<sup>20</sup> to appoint certified firesafety inspectors to conduct annual inspections on educational and ancillary plant property. The bill requires inspections to begin no sooner than one year after a building certificate of occupancy is issued. The applicable board must submit a copy of the report to the county, municipality, or independent special fire control district providing fire protection services within 10 business days after the inspection, unless immediate corrective action is required, due to life-threatening deficiencies. The entity conducting the fire safety inspection is required to certify to the State Fire Marshal that the annual inspection has occurred.

#### Inspections of Educational Property by Other Public Agencies

The bill authorizes annual firesafety inspections to be conducted on educational and ancillary plant property operated by a school board or public college. Such inspections are allowed to begin no sooner than one year after a building certificate of occupancy is issued and annually thereafter. Immediate corrective action is required by the county, municipality, or independent special fire control district in conjunction with the appointed fire official where life-threatening deficiencies are noted.

#### Inspection of Charter Schools Not Located on Board-owned or Leased Property

The bill authorizes a safety or sanitation inspection of any educational or ancillary plant to be conducted at any time by a state or local agency authorized or required to conduct such inspections by general or special law. The agency is required to submit a copy of the inspection report to the charter school sponsor.

The bill requires a firesafety inspection to be conducted each fiscal year on educational facilities not owned or leased by the board or a public college, in accordance with State Fire Marshal standards. Upon request, the inspecting authority is required to provide a copy of each firesafety report to the board in the district in which the facility is located. The inspector must include a corrective plan of action in the report, with prompt response for life-threatening deficiencies. If corrective action is not taken, the county, municipality, or independent special fire control district must immediately report the deficiency to the State Fire Marshal and the charter school sponsor. The bill also expressly extends the State Fire Marshal’s enforcement authority to charter school educational facilities and property.

#### Inspection of Public Postsecondary Education Facilities

The bill requires inspections of public college facilities, including charter schools located on board-owned or board-leased facilities or otherwise operated by public college boards, to comply with the Florida Fire Prevention Code, as adopted by the State Fire Marshal. Local amendments to the provisions of the code relating to such inspections are prohibited. An annual inspection by an inspector certified under s. 633.081, F.S., and a corrective plan of action are required by the bill. After the required firesafety inspection, the inspecting authority is required to develop a plan of action to correct

<sup>20</sup> Section 1013.01(3), F.S., defines “board” to mean “district school boards, community college boards of trustees, university boards of trustees and the Board of Trustees for the School for the Deaf and Blind.”

each deficiency identified. The public college must provide a copy of the report to the appropriate county, municipality, or independent special fire control district. Firesafety inspections of state universities must comply with the Florida Fire Prevention Code. If a school board, public college board, or charter school does not take corrective action, the bill requires the inspecting authority to immediately report the deficiency to the State Fire Marshal.

Each board must provide for periodic inspection of proposed educational plants to ensure that the construction complies with the Florida Building Code and the Florida Fire Prevention Code, in addition to the currently mandated State Requirements for Educational Facilities. Also, to administer and enforce such codes, the bill allows each board to employ a fire official and such other inspectors who have been certified by the State Fire Marshal, in addition to the currently authorized chief building official and such other inspectors who have been certified pursuant to chapter 468, F.S.

#### Construction Site Plans of Proposed Education Facilities

The bill requires local boards to submit for approval new facility site plans to the county, municipality, or independent special fire control district, and outlines the process for compliance and informal appeal. A minimum of one copy of the site plan for each new facility or addition exceeding 2,500 square feet must be provided to the county, municipality, or independent special fire control district providing fire-protection services to the facility. The county, municipality, or independent special fire control district is allowed to review each site plan for compliance with Florida Fire Prevention Code relating to fire department access roads, fire-protection system connection locations, and fire hydrant spacing. The bill makes clear that such site plans are not subject to local amendments, and that these reviews must be performed at no charge to the school board or public college. The bill requires that the site plan be deemed approved within 15 days of receipt unless the local county, municipality, or independent special fire control district submits in writing, to the board appointed fire official, the deficiencies identified with reference to the Florida Fire Prevention Code. If there is disagreement between the board appointed inspector and the local county, municipality, or independent special fire control district official, then either party may refer it to the State Fire Marshal who has final authority.

Before the commencement of any new construction, renovation, or remodeling, the bill requires the school board to approve, or cause to be approved, construction documents for compliance with the Florida Building Code and the Florida Fire Prevention Code. Additionally, the school board must ensure compliance with all firesafety codes by contracting with a firesafety inspector certified by the State Fire Marshal. Furthermore, a certificate of occupancy may not be issued until the board, through its designated certified building official, has determined that the building or structure and its site conditions comply with all applicable statutes and rules. The method of compliance as chosen by the board must be documented and maintained as part of the construction record file. Upon request by the local county, municipality, or independent special fire control district, the board must provide reasonable access to all construction documents.

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

Section 1: Amends s. 633.01, F.S., revising the rulemaking authority and responsibilities of the State Fire Marshal; providing that if a county does not employ or appoint a certified firesafety inspector, the State Fire Marshal is to perform firesafety inspections of educational property.

Section 2: Amends s. 633.021, F.S., clarifying the definition of "firesafety inspector" to include certification under s. 633.081, F.S.

Section 3: Amends s. 633.081, F.S., revising requirements and procedures for inspections of buildings and equipment; abolishing special state firesafety inspector classifications and certifications; providing criteria, procedures, and requirements for special state firesafety inspectors to be certified as firesafety inspectors.

Section 4: Amends s. 1013.12, F.S., revising procedures and requirements for certain standards and inspection of educational property; providing procedures, criteria, and requirements for inspections of charter schools; providing reporting requirements; revising requirements for inspections of public

postsecondary education facilities; deleting a provision requiring that the State Fire Marshal publish an annual report.

Section 5: Amends s. 1013.371, F.S., revising firesafety inspection requirements for educational institution boards to conform to the Florida Building Code and the Florida Fire Prevention Code; revising certain code enforcement authority of such boards certified pursuant to chapter 633, F.S.

Section 6: Amends s. 1013.38, F.S., requiring educational institution boards to submit certain facility site plans to a local county, municipality, or independent special fire control district for review; authorizing such entities to review site plans for compliance with certain provisions of the Florida Fire Prevention Code; specifying that site plans are not subject to local ordinances or local amendments to the Florida Fire Prevention Code; providing criteria for approving site plans and correcting firesafety compliance deficiencies; providing for referral of disputes to the State Fire Marshal; authorizing public education boards to use firesafety inspectors for compliance with the Florida Building Code and the Florida Fire Prevention Code; imposing additional requirements for such boards relating to construction, renovation, or remodeling of educational facilities.

Section 7: Provides an effective date of July 1, 2011.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

The bill likely will create an insignificant reduction in expenditures. The bill deletes the Division of State Fire Marshal's annual state-level report requirement. This will save the Division of State Fire Marshal's office funds and resources that were formerly used to generate the report. According to the DFS, savings will be in the \$5000 range unless the contract with the University of Florida to operate the database is cancelled. If the contract is cancelled, savings will be closer to \$9,000.<sup>21</sup>

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

The bill authorizes the annual inspection of school facilities by county, municipal, or special fire control districts. This reduces the number of mandatory annual inspections from two to one, which may reduce expenditures for local entities required to conduct inspections.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Individuals currently classified as special state firesafety inspectors who do not have five years of experience or fail the firesafety inspection examination will have to undergo the new training requirements to become certified as a general fire safety inspector. Individuals who fail the course of study or firesafety inspection examination will not be permitted to perform firesafety inspections on or after July 1, 2013.

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<sup>21</sup> Department of Financial Services HB 331 Analysis (Feb. 2, 2011), at 1 and 2 (on file with the Government Operations Subcommittee).

#### D. FISCAL COMMENTS:

According to the Department of Financial Services:

This bill should provide some cost savings to local government by reducing duplicative inspections, and to school boards and the Department of Financial Services by reducing the need for an Annual statewide compilation of inspection reports.<sup>22</sup>

DFS' savings will be small, probably in the \$5000 dollar range in actual dollars; any staff time saved by the change would those hours to be redirected to other critical areas and would not result in a real savings to DFS. The \$5000 will come in the modifications to the contract with the University of Florida (UF) and the cost of printing the report which is near \$1000. This assumes that we are required to maintain the database, as has been suggested. The only cost under that scenario would be to pay UF to keep the database active. However, they will not have to manipulate the data to produce the report. If the database also goes away, it will be closer to \$9,000 as the contract with the UF can be cancelled in its entirety.<sup>23</sup>

According to an unofficial survey conducted by the Department of Education (DOE), the total estimated annual cost savings for colleges and school districts will be approximately \$515,210.<sup>24</sup>

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to: require cities or counties to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a shared state tax or premium sales tax received by cities or counties.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The bill requires the State Fire Marshal to consult with the DOE regarding the adoption of rules pertaining to safety and health standards at educational facilities. Consequently, the DOE rules related to education facilities<sup>25</sup> and the State Fire Marshal rules for education facilities<sup>26</sup> adopted pursuant to Chapter 120, F.S., may need amending.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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<sup>22</sup> Department of Financial Services HB 331 Analysis (Feb. 10, 2011), at 3 and 4 (on file with the Government Operations Subcommittee).

<sup>23</sup> Department of Financial Services HB 331 Updated Analysis (March 7, 2011), at 1 and 2 (on file with the Government Operations Subcommittee).

<sup>24</sup> Department of Education HB 331 Analysis (Feb. 17, 2011), at 5 (on file with the Government Operations Subcommittee).

<sup>25</sup> Rule 6A-2.0010, F.A.C., State Requirements for Educational Facilities (SREF).

<sup>26</sup> Rule Chapter 69A-58, F.A.C., Firesafety in Education Facilities.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.