

- 1) A familial relationship within the third degree exists between the neutral evaluator and either party or a representative of either party;
- 2) The proposed neutral evaluator has, in a professional capacity, previously represented either party or a representative of either party in the same or a substantially related matter;
- 3) The proposed neutral evaluator has, in a professional capacity, represented another person in the same or a substantially related matter and that person's interests are materially adverse to the interests of the parties; or
- 4) The neutral evaluator has worked as an employer or employee of any party to the case in the preceding 5 years.

**Effect of Proposed Changes - Neutral Evaluation for Sinkhole Insurance Claims** (Section 17)

The bill adds an additional basis for the DFS to disqualify a proposed neutral evaluator for cause at the request of a party. A proposed neutral evaluator may be disqualified for cause if, within the preceding 5 years, the neutral evaluator worked for the company or firm that performed the initial testing to determine the presence or absence of sinkhole loss or other causes of damage to the property in question.

**Current Situation – Exemption from Disqualification from Licensure or Certification**

An individual is disqualified from obtaining any class of firefighter certification or licensure if such individual has committed a felony or a crime punishable by imprisonment of 1 year or more, or has been dishonorably discharged from the United States Armed Forces.<sup>49</sup> Current law does not provide the DFS with the discretion to grant disqualified individuals an exemption from disqualification.

**Effect of Proposed Changes – Exemption from Disqualification from Licensure or Certification**  
(Section 19)

The bill creates s. 633.107, F.S., establishing discretionary standards whereby the DFS may exempt an applicant convicted of a felony or dishonorably discharged from the United States Armed Forces from disqualification from licensure or certification. Two primary requirements must be met:

- 1) The applicant must have paid in full any cost imposed by a court as part of the judgment and sentence for the disqualifying offense; and
  - a. A minimum of 5 years have elapsed since the applicant completed or was lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for the disqualifying offense; or
  - b. A minimum of 5 years have elapsed since the applicant was dishonorably discharged from the United States Armed Forces.
- 2) The applicant must clearly and convincingly demonstrate to the DFS that she or he does not pose a risk to persons or property if permitted to be licensed or certified. The bill provides for the types of evidence that may be presented by the applicant.

The DFS retains discretion to grant an exemption and such decisions must be made in writing. The DFS' decisions are subject to proceedings under ch. 120, F.S.

An exemption applicant that has received executive clemency or a pardon is not subject to the time limitations noted above. Applicants that receive an executive clemency are required to comply with the second requirement above. The DFS is not required to award the exemption. The DSFM has rulemaking authority to adopt rules to administer this section.

**Current Situation – Firefighter Assistance Grant Program**

Volunteer firefighters comprise about 69 percent of firefighters in the United States.<sup>50</sup> Since 1984, the number of volunteer firefighters has declined by about 12 percent, from 897,750 to 786,150.<sup>51</sup> Factors

<sup>49</sup> ss. 633.412 and 633.408, F.S.

<sup>50</sup> NATIONAL VOLUNTEER FIREFIGHTER COUNCIL, *Fire Service Statistics and Fact Sheets*, <http://www.nvfc.org/hot-topics/statistics-and-fact-sheets> (last visited Jan. 26, 2016).

<sup>51</sup> *Id.*

contributing to the decline in volunteer firefighters include increased time demands and costs for training coupled with potential volunteers that work multiple jobs in two-income families.<sup>52</sup> The situation is no different in Florida, where nearly 12 million residents depend on volunteer firefighters to protect their communities,<sup>53</sup> yet many volunteer and combination fire departments<sup>54</sup> report fiscal constraints in acquiring the training and equipment that is needed to perform their duties while still meeting the required minimum safety levels.<sup>55</sup>

The Florida Fire College, in conjunction with corporate sponsors, hosts the annual Northwest Volunteer Firefighter Weekend (NVFW). The event provides volunteer firefighters with free training and equipment. The DFS reports that attendees consistently report that if not for the NVFW, they would not have the resources to take the proper training courses and to acquire the proper equipment to perform their duties because many volunteer and combination fire departments rely on donations to fund a large part of their operations.<sup>56</sup> Additionally, the DSFM, through its statutory authority to perform safety inspections of fire departments, constantly reports compliance issues with training and equipment due to a lack of fiscal resources.<sup>57</sup>

### **Effect of Proposed Changes – Firefighter Assistance Grant Program** (Section 20)

The bill creates s. 633.135, F.S., the Firefighter Assistance Grant Program (Program), within the DSFM, to improve the emergency response capabilities of volunteer fire departments and combination fire departments. The Program's stated goal is to improve firefighter safety and enable fire departments to provide firefighting, emergency medical, and rescue services to their communities.

The Program will annually award financial assistance to aid such fire departments in providing firefighter training to individuals to obtain a Volunteer Firefighter Certificate of Completion and procuring the necessary equipment for the firefighter and fire department. On average, the cost to train and equip a volunteer firefighter with personal protective equipment is about \$27,095 and the cost of fire engine pump apparatus equipment can range \$150,000 - \$400,000.<sup>58</sup> The DSFM is required to prioritize the grant of awards to combination and volunteer fire departments based on the results of participating in the annual Florida Fire Service Needs Assessment Survey.

The DSFM is given rulemaking authority to adopt rules and procedures for the Program that require grant recipients to:

- Report their activity to the DSFM for submission in the Fire and Emergency Incident Information Reporting System;
- Annually complete and submit the Florida Fire Service Needs Assessment Survey to the DSFM;
- Comply with the Florida Firefighters Occupational Safety and Health Act;
- Comply with any other rule determined by the DSFM to effectively and efficiently implement, administer, and manage the Program; and
- Meet the definition of a "fire service provider" in s. 633.102, F.S.

The bill appropriates \$229,165 in recurring funds from the Insurance Regulatory Trust Fund and authorizes one full-time equivalent position in order to create and administer the Firefighter Assistance Grant Program within the DFS.

### **Current Situation - Minimum Firesafety Standards**

---

<sup>52</sup> *Id.*

<sup>53</sup> FLORIDA'S CHIEF FINANCIAL OFFICER, *Florida Volunteer Firefighter Information*, <http://www.myfloridacfo.com/Division/sfm/VOLFF/default.htm> (lasted visited Jan. 26, 2016).

<sup>54</sup> A "combination fire department" means a fire department composed of a combination of career and volunteer firefighters.

<sup>55</sup> Email from B.G. Murphy, Deputy Legislative Affairs Director, Florida Department of Financial Services, RE: FFAG – Talking Points (Jan. 22, 2015).

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> NATIONAL VOLUNTEER FIREFIGHTER COUNCIL, *Fire Service Statistics and Fact Sheets*, <http://www.nvfc.org/hot-topics/statistics-and-fact-sheets> (last visited Jan. 26, 2016).

The Life Safety Code (LSC), which is contained in the Florida Fire Prevention Code (FFPC), provides minimum fire safety requirements, with due regard to function, for the design, operation, and maintenance of buildings and structures. The LSC does not apply to one-family and two-family dwellings; however, the current statutory language could be misconstrued to suggest that the LSC does apply to “newly constructed” one-family and two-family dwellings.

#### Effect of Proposed Changes - Minimum Firesafety Standards (Section 21)

The bill removes “newly constructed” from the statute to clarify that the LSC does not apply to existing or newly constructed one-family and two-family dwellings.

#### Current Situation - Firefighter Certification

Chapter 633, F.S., governs state law on fire prevention and control. The CFO is designated as the State Fire Marshall, operating through the DSFM,<sup>59</sup> and tasked with regulating “fire service providers.” The DSFM is responsible for establishing, by rule, a Minimum Standards Course as the training and educational curriculum of firefighters and volunteers firefighters. A Firefighter is defined as an individual who holds a current and valid Firefighter Certificate of Compliance (FCOC) or Special Certificate of Compliance issued by the DSFM. A FCOC is issued by the DSFM to an individual who does all of the following:

1. Satisfactorily completes the Minimum Standards Course or training in another state determined by the DSFM to be, at a minimum, the equivalent of the training required for the Minimum Standards Course;
2. Passes the Minimum Standards Course examination; and
3. Meets the character and fitness requirements set forth in s. 633.412, F.S.

The DFS has reported that many applicants wait a year or longer to take the Minimum Standards Course examination after completion of the course, resulting in a high rate of failure and the need to re-take the course.<sup>60</sup>

“Certification” or “certified” is defined as the act of holding a current and valid certificate.<sup>61</sup> If evidence is found to demonstrate that certification was improperly issued, such as issuance on the basis of false or misleading information, an individual’s certification may be suspended or revoked by the DSFM. In such a case, the DSFM must suspend or revoke all other certificates issued to the individual by the DSFM.

In order for a firefighter to retain/renew her or his FCOC, every 4 years she or he must:

- Be active as a firefighter;
- Maintain a current and valid fire service instructor certificate, instruct at least 40 hours during the 4-year period, and provide proof of such instruction to the DSFM, which proof must be registered in an electronic database designated by the DSFM;
- Successfully complete a refresher course consisting of a minimum of 40 hours of training to be prescribed by rule; or
- Within 6 months before the 4-year period expires, successfully retake and pass the Minimum Standards Course examination.<sup>62</sup>

Currently, there are no separate renewal requirements for a fire service instructor.

#### Effect of Proposed Changes - Firefighter Certification (Sections 18, 22, 23, 24, and 25)

The bill redefines “fire service provider” to include ‘the DSFM’ which houses and employs over 140 firefighters. This change will permit the DSFM’s firefighters to be classified as active firefighters in accordance with statute.

---

<sup>59</sup> s. 633.104, F.S

<sup>60</sup> Florida Department of Financial Services, Agency Analysis of 2015 House Bill 651, p. 5 (Jan. 1, 2016).

<sup>61</sup> s. 633.426(1)(b), F.S.

<sup>62</sup> s. 633.414(1), F.S.

The bill repeals the mandatory requirement of a suspension or revocation of all other certifications issued to an individual following the suspension or revocation of an individual's certificate.

The bill requires the Minimum Standards Course examination to be taken and passed within 12 months of completing the Minimum Standards Course. The bill clarifies that a FCOC or Volunteer Firefighter Certificate of Completion will expire 4 years after the date of issuance unless renewed.

The bill amends the certification renewal requirements for firefighters. In order to retain an FCOC, every 4 years a firefighter must meet the requirements provided under ch. 633, F.S., and by rule, which must include at least one of the following:

- Be active as a firefighter;
- Maintain a current and valid fire service instructor certificate, instruct at least 40 hours during the 4-year period, and provide proof of such instruction to the DSFM, which proof must be registered in an electronic database designated by the DSFM;
- Within 6 months before the 4-year period expires, successfully complete a Firefighter Retention Refresher Course; or
- Within 6 months before the 4-year period expires, successfully retake and pass the Minimum Standards Course examination.

Additionally, the State Fire Marshall is provided grounds to deny, refuse to renew, suspend, or revoke the certificate of an individual.

The definition of "certification" or "certified" is amended to mean the act of holding a current and valid certificate that meets the requirements for renewal of certification pursuant to ch. 633, F.S., and by rule.

#### **Current Situation – Rulemaking Authority for Unclaimed Property**

Chapter 717, F.S., the Florida Disposition of Unclaimed Property Act (FDUP), is administered and enforced by the DFS. Under the FDUP, unclaimed property is categorized as all intangible property<sup>63</sup> held, issued, or owing in the ordinary course of business that fails to be claimed by its owner for more than 5 years after such intangible property becomes payable or distributable.<sup>64</sup> All funds received under the FDUP are deposited into the Unclaimed Property Trust Fund. The DFS is required to retain no more than \$15 million in the Trust Fund, from which the DFS is required to make prompt payment of claims allowed by the DFS and to pay the costs incurred in administering and enforcing the FDUP. All remaining funds are deposited into the State School Fund. The DFS is given rulemaking authority to adopt rules to implement the FDUP.

---

<sup>63</sup> Intangible property includes, but is not limited to, money, checks, interest, dividends, income, security deposits, credit balances, unpaid wages, stocks, bonds, amounts due and payable under the terms of insurance policies, and amounts distributable from a trust. See s. 717.101(14), F.S.

<sup>64</sup> s. 717.102, F.S.