

HOUSE AMENDMENT NO. _____
TO
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Offered By

1 AMEND House Amendment No. _____ to House Substitute for House Committee Substitute for
2 House Bill Nos. 1108 & 1181, Page 1, Line 3, by inserting after all of said line the following:

3
4 "Further amend said bill, Page 34, Section 320.210, Line 19, by inserting after all of said section and
5 line the following:

6
7 "320.450. 1. For purposes of this section, the following terms shall mean:

8 (1) "Agency", a fire department or fire protection district;

9 (2) "Economic loss", any economic loss including, but not limited to, loss of overtime
10 accrual, overtime income, sick time accrual, sick time, secondary employment income, holiday pay,
11 and vacation pay;

12 (3) "Firefighter", any officer or employee in the service of any fire department or fire
13 protection district including, but not limited to, any municipal, volunteer, rural, or subscription-
14 based fire department or organization;

15 (4) "Good cause", sufficient evidence or facts that would support a party's request for
16 extensions of time or any other requests seeking accommodations outside the scope of the rules set
17 out herein;

18 2. Whenever a firefighter is under administrative investigation or is subjected to
19 administrative questioning that he or she reasonably believes could lead to disciplinary action,
20 demotion, dismissal, transfer, or placement on a status that could lead to economic loss, the
21 investigation or questioning shall be conducted under the following conditions:

22 (1) The firefighter who is the subject of the investigation shall be informed, in writing, of
23 the existence and nature of the alleged violation and the individuals who will be conducting the
24 investigation. Notice shall be provided to the firefighter along with a copy of the complaint at least
25 twenty-four hours prior to any interrogation or interview of the firefighter;

26 (2) Any person, including members of the same agency as the firefighter under
27 investigation, filing a complaint against a firefighter shall have the complaint supported by a written
28 statement outlining the complaint that includes the personal identifying information of the person
29 filing the complaint. All personal identifying information shall be held confidential by the
30 investigating agency;

31 (3) When a firefighter is questioned or interviewed regarding matters pertaining to his or her
32 firefighting duties or actions taken within the scope of his or her employment, such questioning shall
33 be conducted for a reasonable length of time and only while the firefighter is on duty unless
34 reasonable circumstances exist that necessitate questioning the firefighter while he or she is off duty;

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1 (4) Any interviews or questioning shall be conducted at a secure location at the agency that
2 is conducting the investigation or at the place where the firefighter reports to work, unless the
3 firefighter consents to another location;

4 (5) Firefighters shall be questioned by up to two investigators and shall be informed of the
5 name, rank, and command of the investigator or investigators conducting the investigation; except
6 that, separate investigators shall be assigned to investigate alleged department policy violations and
7 alleged criminal violations;

8 (6) Interview sessions shall be for a reasonable period of time. There shall be times
9 provided for the firefighter to allow for such personal necessities and rest periods as are reasonably
10 necessary;

11 (7) Firefighters shall not be threatened, harassed, or promised rewards to induce them into
12 answering any question;

13 (8) Firefighters under investigation are entitled to have an attorney or any duly authorized
14 representative present during any questioning that the firefighter reasonably believes may result in
15 disciplinary action. The attorney or representative shall be permitted to confer with the firefighter
16 but shall not unduly disrupt or interfere with the interview. The questioning shall be suspended for a
17 period of up to twenty-four hours if the firefighter requests representation;

18 (9) Prior to the firefighter being interviewed, the firefighter and his or her attorney or
19 representative shall have the opportunity to review the complaint;

20 (10) The agency conducting the investigation shall have ninety days from receipt of a
21 complaint to complete such investigation. The agency shall determine the disposition of the
22 complaint and render a disciplinary decision, if any, within ninety days. The agency may, for good
23 cause, petition the entity overseeing the administration of discipline for an extension of time to
24 complete the investigation. If the entity finds the agency has shown good cause for the granting of
25 an extension of time to complete the investigation, the entity shall grant an extension of up to sixty
26 days. The agency is limited to two extensions per investigation; except that, if there is an ongoing
27 criminal investigation there shall be no limitation on the amount of sixty-day extensions. For good
28 cause shown, the internal investigation may be tolled until the conclusion of a concurrent criminal
29 investigation arising out of the same alleged conduct. Absent consent from the firefighter being
30 investigated, the entity overseeing the administration of discipline shall set the matter for hearing
31 and shall provide notice of the hearing to the firefighter under investigation. The firefighter shall
32 have the right to attend the hearing and to present evidence and arguments against extension;

33 (11) Within five days of the conclusion of the administrative investigation, the investigator
34 shall inform the firefighter, in writing, of the investigative findings and any recommendation for
35 further action, including discipline;

36 (12) A complete record of the administrative investigation shall be kept by the agency
37 conducting such investigation. Upon completion of the investigation, a copy of the entire record,
38 including, but not limited to, audio, video, and transcribed statements, shall be provided to the
39 firefighter or his or her representative within five business days of the firefighter's written request.
40 The agency may request a protective order to redact all personal identifying witness information;
41 and

42 (13) All records compiled as a result of any investigation subject to the provisions of this
43 section shall be held confidential and shall not be subject to disclosure under chapter 610, except by
44 lawful subpoena or court order, by release approved by the firefighter.

45 3. Firefighters who are suspended without pay, demoted, terminated, transferred, or placed
46 on a status resulting in economic loss shall be entitled to a full due process hearing. However,
47 nothing in this section shall prohibit an agency and the authorized bargaining representative for a
48 firefighter employed by that agency from reaching written agreements providing disciplinary
49 procedures more favorable than those provided for this section. The components of the hearing

1 shall include, at a minimum:

2 (1) The right to be represented by an attorney or other individual of their choice during the
3 hearing;

4 (2) Seven days' notice of the hearing date and time;

5 (3) An opportunity to access and review documents, at least seven days in advance of the
6 hearing, that are in the employer's possession and that were used as a basis for the disciplinary
7 action;

8 (4) The right to refuse to testify at the hearing if the firefighter is concurrently facing
9 criminal charges in connection with the same incident. A firefighter's decision not to testify shall
10 not result in additional internal charges or discipline;

11 (5) A complete record of the hearing shall be kept by the agency for purposes of appeal.
12 The record shall be provided to the firefighter or his or her attorney upon written request;

13 (6) The entire record of the hearing shall remain confidential and shall not be subject to
14 disclosure under chapter 610, except by lawful subpoena or court order.

15 4. Any decision, order, or action taken following the hearing shall be in writing and shall be
16 accompanied by findings of fact. The findings shall consist of a concise statement upon each issue
17 in the case. A copy of the decision or order accompanying findings and conclusions along with the
18 written action and right of appeal, if any, shall be delivered or mailed promptly to the firefighter or
19 to the firefighter's attorney or representative of record.

20 5. Firefighters shall have the opportunity to provide a written response to any adverse
21 materials placed in their personnel file, and such written response shall be permanently attached to
22 the adverse material.

23 6. Firefighters shall have the right to compensation for any economic loss incurred during an
24 investigation if the firefighter is found to have committed no misconduct.

25 7. Employers shall defend and indemnify firefighters from and against civil claims made
26 against them in their official and individual capacities if the alleged conduct arose in the course and
27 scope of their obligations and duties as firefighters. In the event the firefighter is convicted of, or
28 pleads guilty to, criminal charges arising out of the same conduct, the employer shall no longer be
29 obligated to defend and indemnify the firefighter in connection with related civil claims.

30 8. Firefighters shall not be disciplined, demoted, dismissed, transferred, or placed on a status
31 resulting in economic loss as a result of the assertion of their constitutional rights in any judicial
32 proceeding, unless the firefighter admits to wrongdoing, in which case the provisions of this section
33 shall not apply.

34 9. Any aggrieved firefighter or authorized representative may seek judicial enforcement of
35 the requirements of this section. Suits to enforce this section shall be brought in the circuit court for
36 the county in which the agency or governmental body has its principal place of business.

37 10. Upon a finding by a preponderance of the evidence that an agency, governmental body,
38 or member of same has violated any provision of this section, a court shall void any action taken in
39 violation of this section. The court may also award the firefighter the costs of bringing the suit
40 including, but not limited to, attorneys' fees. A lawsuit for enforcement shall be brought within one
41 year from which the violation is ascertainable.

42 11. Nothing in this section shall apply to any investigation or other action by the director
43 regarding a license issued by the director under this chapter.

44 12. An agency that has substantially similar or greater procedures shall be deemed in
45 compliance with this section."; and"; and

46
47 Further amend said bill by amending the title, enacting clause, and intersectional references
48 accordingly.

49 THIS AMENDS 2147H07.10H.