



HOUSE BILL 259: 2023 Appropriations Act, Sec. 30.8: Office of State Fire Marshal Established

2023-2024 General Assembly

Committee:		Date:	December 12, 2023
Introduced by:		Prepared by:	Karyl Smith Staff Attorney
Analysis of:	Sec. 30.8 of S.L. 2023-134		

OVERVIEW: *Section 30.8(a) of S.L. 2023-134, as amended by Section 10.1(a) of S.L. 2023-151, does the following:*

- *Creates the Office of the State Fire Marshal (OSFM) within the Department of Insurance (DOI) and requires OSFM to exercise its powers and duties independently of DOI.*
- *Requires DOI to provide clerical and professional services to OSFM.*
- *Sets out several laws OSFM is responsible for administering.*
- *Names the State Fire Marshal as the head of OSFM and requires that person be appointed by the Commissioner of the Department of Insurance (Commissioner) subject to confirmation by the General Assembly by joint resolution.*
- *Requires that the State Fire Marshal be a person other than the Commissioner and serve a three-year term.*
- *Allows the Commissioner to appoint a State Fire Marshal to serve on an interim basis pending confirmation by the General Assembly, if a vacancy arises when the General Assembly is not in session.*
- *Provides for the compensation of the State Fire Marshal.*
- *Requires the State Fire Marshal to faithfully execute all laws that office is responsible for administering and authorizes the State Fire Marshal to adopt rules to enforce those laws.*
- *Declares that OSFM is a public office and requires, outside of a few exceptions, that the records of OSFM be accessible to the public for inspection.*
- *States the procedures OSFM must follow when conducting required hearings and investigations.*
- *Authorizes the State Fire Marshal to designate a member of staff to serve as a hearing officer in any contested case involving OSFM.*
- *Permits the State Fire Marshal to impose civil penalties and/or petition the court for an order to pay restitution, if the State Fire Marshal finds that a person licensed by OSFM has violated any provision of the Office of the State Fire Marshal statutes.*
- *Allows for court review of the State Fire Marshal's orders and decisions.*
- *Permits every document executed by the State Fire Marshal to be used as evidence and recorded, in the same manner and with the same effect as a deed regularly acknowledged or proved before*

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an officer authorized to take probate. All copies of papers in OSFM certified by the State Fire Marshal and authenticated by that office's seal are evidence of the original documents.

- *Requires a party that requests or files a subpoena for the State Fire Marshal or any employee of OSFM to testify as an expert witness in any civil or administrative action on that party's behalf to, upon receiving a statement of the cost from the State Fire Marshal, reimburse OSFM for the actual time and expenses incurred by OSFM in connection with the testimony.*
- *Instructs the State Fire Marshal, with the approval of the Governor, to (i) create a seal, with suitable inscription, for that office and (ii) file a description of the seal, along with the certificate of approval by the Governor, with the Office of the Secretary of State.*
- *Directs the State Fire Marshal (or designee in OSFM) to administer all oaths required in the discharge of the State Fire Marshal's official duty.*
- *Allows the State Fire Marshal to petition the court for a restraining order and injunction, if the State Fire Marshal determines any person has violated, is violating, or threatens to violate any provision of the North Carolina Manufactured Housing Board – Manufactured Home Warranties statutes.*
- *States that the conviction in court of any person licensed under the North Carolina Manufactured Housing Board – Manufactured Home Warranties statutes for any criminal violation of those statutes automatically has the effect of suspending the license of that person until the license is reinstated by the North Carolina Manufactured Housing Board.*
- *Allows a person or entity licensed under the North Carolina Manufactured Housing Board – Manufactured Home Warranties statutes, with the consent of the State Fire Marshal, to surrender the license for a period of time established by the State Fire Marshal, if the licensee is accused of any act, omission, or misconduct that will subject the license to suspension or revocation.*
- *Requires applicants for an OSFM-issued license to notify the State Fire Marshal of changes of address and criminal convictions within certain time frames, and permits the State Fire Marshal to give notice to licensees personally or by first-class mail.*
- *Allows the State Fire Marshal to create and appoint advisory committees.*

Section 30.8(e) of S.L. 2023-134, as amended by Section 10.2(a) of S.L. 2023-151, requires the Chief State Fire Marshal (position number 60013729), serving on October 1, 2023, notwithstanding any provision of law, to serve as the State Fire Marshal until the General Assembly confirms an independent State Fire Marshal.

The remainder of Section 30.8 of S.L. 2023-134 requires DOI to eliminate one or more vacant positions and use the funds made available as a result to fund the new position of State Fire Marshal.

The remainder of Section 10 of S.L. 2023-151 does the following:

- *Removes the authority of the Commissioner to exercise general supervision over local fire investigators and fire prevention inspectors, and grants that authority solely to the State Fire Marshal.*

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- *Removes the authority of the Commissioner to inspect State property and determine its protection from fire, and grants that authority solely to the State Fire Marshal.*
- *Clarifies that OSFM must report certain information about various relief funds to specific legislative committees and the Fiscal Research Division.*
- *Requires the individual serving as the legislative liaison for OSFM (position number 60013560) on October 1, 2023, to continue to serve in that capacity at the individual's option or until further action is taken by OSFM in accordance with law.*
- *Requires all employees of OSFM on October 1, 2023, to continue as employees of OSFM at their option or until further action is taken by OSFM in accordance with law. All positions in OSFM on October 1, 2023, must remain in OSFM unless changed by the General Assembly. All programs and functions conducted by OSFM on October 1, 2023, must continue without any reduction in funds, responsibilities, or administrative support, including, but not limited to, budgetary, human resources, information technology, and legal, unless expressly authorized by the General Assembly.*

Section 30.8 of S.L. 2023-134 and Section 10.1 of S.L. 2023-151 become effective January 1, 2024. The remainder of Section 10 of S.L. 2023-151 became effective November 9, 2023.

PRIOR LAW: The Commissioner served as the State Fire Marshal through OSFM, which aims to protect lives and property in North Carolina by training fire and rescue personnel, administering the State building code, securing property insurance for State-owned buildings, and reviewing construction plans for State building projects.

BILL ANALYSIS: Section 30.8(a) of S.L. 2023-134, as amended by Section 10.1(a) of S.L. 2023-151, does the following:

- Creates OSFM within DOI and requires OSFM to exercise its powers and duties independently of DOI.
- Requires DOI to provide clerical and professional services to OSFM.
- Sets out several laws OSFM is responsible for administering.
- Names the State Fire Marshal as the head of OSFM and requires that person to be appointed by the Commissioner subject to confirmation by the General Assembly by joint resolution.
- Requires that the State Fire Marshal be a person other than the Commissioner and serve a three-year term.
- Allows the Commissioner to appoint a State Fire Marshal to serve on an interim basis pending confirmation by the General Assembly, if a vacancy exists when the General Assembly is not in session.
- Provides for the compensation of the State Fire Marshal.
- Requires the State Fire Marshal to faithfully execute all laws that office is responsible for administering and authorizes the State Fire Marshal to adopt rules to enforce those laws.
- Declares that OSFM is a public office and requires, outside of a few exceptions, that the records of OSFM be accessible to the public for inspection.
- States the procedures OSFM must follow when conducting required hearings and investigations.

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- Authorizes the State Fire Marshal to designate a member of staff to serve as a hearing officer in any contested case involving OSFM.
- Permits the State Fire Marshal to impose civil penalties and/or petition the court for an order to pay restitution, if the State Fire Marshal finds that a person licensed by OSFM has violated any provision of the Office of the State Fire Marshal statutes.
- Allows for court review of the State Fire Marshal's orders and decisions.
- Permits every document executed by the State Fire Marshal to be used as evidence and recorded, in the same manner and with the same effect as a deed regularly acknowledged or proved before an officer authorized to take probate. All copies of papers in OSFM certified by the State Fire Marshal and authenticated by that office's seal are evidence of the original documents.
- Requires a party that requests or files a subpoena for the State Fire Marshal or any employee of OSFM to testify as an expert witness in any civil or administrative action on that party's behalf to, upon receiving a statement of the cost from the State Fire Marshal, reimburse OSFM for the actual time and expenses incurred by OSFM in connection with the testimony.
- Instructs the State Fire Marshal, with the approval of the Governor, to (i) create a seal, with suitable inscription, for that office and (ii) file a description of the seal, along with the certificate of approval by the Governor, with the Office of the Secretary of State.
- Directs the State Fire Marshal (or designee in OSFM) to administer all oaths required in the discharge of the State Fire Marshal's official duty.
- Allows the State Fire Marshal to apply to the court for a restraining order and injunction, if the State Fire Marshal determines any person has violated, is violating, or threatens to violate any provision of the North Carolina Manufactured Housing Board – Manufactured Home Warranties statutes.
- States that the conviction in court of any person licensed under the North Carolina Manufactured Housing Board – Manufactured Home Warranties statutes for any criminal violation of those statutes automatically has the effect of suspending the license of that person until the license is reinstated by the North Carolina Manufactured Housing Board.
- Allows a person or entity licensed under the North Carolina Manufactured Housing Board – Manufactured Home Warranties statutes, with the consent of the State Fire Marshal, to surrender the license for a period of time established by the State Fire Marshal, if the licensee is accused of any act, omission, or misconduct that would subject the license to suspension or revocation.
- Requires applicants for an OSFM-issued license to notify the State Fire Marshal of changes of address and criminal convictions within certain time frames, and permits the State Fire Marshal to give notice to licensees personally or by first-class mail.
- Allows the State Fire Marshal to create and appoint advisory committees.

Section 30.8(e) of S.L. 2023-134, as amended by Section 10.2(a) of S.L. 2023-151, requires the Chief State Fire Marshal (position number 60013729), serving on October 1, 2023, notwithstanding any provision of law, to serve as the State Fire Marshal until the General Assembly confirms an independent State Fire Marshal. In his capacity as State Fire Marshal (until the General Assembly confirms an independent State Fire Marshal), the Chief State Fire Marshal has the same powers as the Commissioner

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under the insurance statutes for the purposes of executing the laws assigned to the State Fire Marshal and OSFM.

The remainder of Section 30.8 of S.L. 2023-134 requires DOI to eliminate one or more vacant positions and use the funds made available as a result to fund the new position of State Fire Marshal.

The remainder of Section 10 of S.L. 2023-151 does the following:

- **Section 10.1(c)** removes the authority of the Commissioner to exercise general supervision over local fire investigators and fire prevention inspectors, and grants that authority solely to the State Fire Marshal.
- **Section 10.1(e)** removes the authority of the Commissioner to inspect State property and determine its protection from fire, and grants that authority solely to the State Fire Marshal.
- **Section 10.1(g)** clarifies that OSFM must report certain information about various relief funds to the House Appropriations Subcommittee on General Government, the Senate Appropriations Committee on General Government and Information Technology, and the Fiscal Research Division.
- **Section 10.2(b)** requires the individual serving as the legislative liaison for OSFM (position number 60013560) on October 1, 2023, to continue to serve in that capacity at the individual's option or until further action is taken by OSFM in accordance with law.
- **Section 10.3** requires all employees of OSFM on October 1, 2023, to continue as employees of OSFM at their option or until further action is taken by OSFM in accordance with law. All positions in OSFM on October 1, 2023, must remain in OSFM unless changed by the General Assembly. All programs and functions conducted by OSFM on October 1, 2023, must continue without any reduction in funds, responsibilities, or administrative support, including, but not limited to, budgetary, human resources, information technology, and legal, unless expressly authorized by the General Assembly.

EFFECTIVE DATE: Section 30.8 of S.L. 2023-134 and Section 10.1 of S.L. 2023-151 become effective January 1, 2024. The remainder of Section 10 of S.L. 2023-151 became effective November 9, 2023.