



Bill Analysis

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Legislative Service Commission

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BILL SUMMARY

- Declares the State Fire Marshal's office to be a "firefighting agency" to allow the office to provide fire protection or emergency medical services to any governmental entity, firefighting agency, private fire company, or emergency medical service organization in Ohio or another jurisdiction.
- Provides certain full defenses to civil liability to the Fire Marshal's office, and a qualified "personal" civil immunity to the office's officers and employees, relative to negligent actions or omissions during motor vehicle operation while providing fire protection or emergency medical services to any governmental entity, firefighting agency, private fire company, or emergency medical service organization in Ohio or another jurisdiction.
- Provides a full defense to civil liability to the Fire Marshal's office for negligent actions or omissions during motor vehicle operation by the Fire Marshal, Chief Deputy Fire Marshal, or assistant fire marshals when carrying out specified powers, and a qualified "personal" civil immunity to those individuals relative to motor vehicle operation under the same circumstances.
- Provides a qualified civil immunity for instructors at the Ohio Fire Academy and other fire service training programs.

* This analysis was prepared before the report of the Senate State and Local Government and Veterans Affairs Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Renames the Arson Bureau in the Fire Marshal's office as the Fire and Explosion Investigation Bureau.
- Renames the Arson Crime Laboratory in the Fire Marshal's office as the Forensic Laboratory.
- Creates the Bureau of Code Enforcement in the Fire Marshal's office and specifies the qualifications and duties of the Bureau's chief.
- Grants the Chief of the Bureau of Code Enforcement, and assistant fire marshals under certain direction, the power to cause the inspection of certain buildings, structures and other places.
- Makes permissive the Fire Marshal's duty to conduct tests of fire protection systems and devices, and fire fighting equipment.
- Expands the types and nature of items the Fire Marshal or an assistant fire marshal may require a witness to produce during an inquiry or investigation.
- Modifies the law concerning citations issued by the Fire Marshal, an assistant fire marshal, or a certified fire safety inspector and related appeals.
- Makes permissive the Fire Marshal's duty to arrest and charge a person for arson or a similar crime or for negligent burning.
- Exempts from the Commercial Drivers Licensure Law vehicles of the Fire Marshal's office operated by its employees while performing certain functions.
- Expands the employees of the Fire Marshal's office who must be excluded from the classified civil service.
- Revises the qualifications of the Fire Marshal and of the Chief Deputy Fire Marshal, and revises the characteristics of an assistant fire marshal.
- Provides for the temporary filling by the Chief Deputy Fire Marshal of the Fire Marshal's office when an absence or temporary inability to perform of the Fire Marshal, or a vacancy in the office, occurs.

- Requires the Fire Marshal to develop a uniform standard, rather than a form, for the reporting of burn injuries, and expands the definition of "burn injury" to include physical harm caused by fireworks, novelties and trick noisemakers, and wire sparklers.
- Allows the State Fire Commission to maintain the Ohio Fire Service Hall of Fame and to use state funds for the payment of associated recognition and commemoration expenses.
- Makes other changes in the Fire Marshal's Law and related statutes.
- Increases from \$200 to \$300 per month the amount of benefits payable from the Volunteer Fire Fighters' Dependents Fund to a volunteer firefighter who is totally and permanently disabled in the line of duty.
- Increases from \$65 to \$125 per month the amount of the benefits payable from the Volunteer Fire Fighters' Dependents Fund for certain surviving dependent children of volunteer firefighters, and extends those benefits to dependent children under 23 years of age who attend a specified type of post-secondary educational institution.
- Increases from \$200 to \$300 per month the amount of the benefits payable from the Volunteer Fire Fighters' Dependents Fund to the surviving spouses of volunteer firefighters, and permits the benefit to continue following remarriage.
- Provides paid leave of 40 hours per year to state employees for service as a volunteer firefighter or emergency medical services worker.

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CONTENT AND OPERATION

Provision of fire protection or emergency medical services

Current law authorizes a "firefighting agency" (a municipal corporation, township, township fire district, joint ambulance district, joint emergency medical services district, or joint fire district) to (1) contract with any governmental entity in Ohio or another jurisdiction to provide fire protection or emergency medical services, whether on a regular basis or only in times of emergency, upon the approval of the requisite governing boards or administrative heads or (2) provide fire protection or emergency medical services to any such governmental entity,

without a contract, upon the approval of the agency's governing board and the authorization of a designated officer or employee of the agency (sec. 9.60(B), (C), and (D)).

The bill adds the State's Fire Marshal's office to the definition of a "firefighting agency." By doing so, it allows the office to provide fire protection or emergency medical services (1) to other governmental entities in Ohio or another jurisdiction under a contract as described above or (2) to other governmental entities, firefighting agencies, private fire companies, or emergency medical service organization in Ohio or another jurisdiction without a contract upon the authorization of the Fire Marshal. (Sec. 9.60(A)(3), (B), (C), and (D)(2).)

Civil immunity provisions

Background law

Under current law, the state may be sued in, and be found liable in damages in, the Court of Claims for harm caused by its officers or employees in tortious acts or omissions. "State" includes the General Assembly, the Supreme Court, the offices of all elected state officers, and all departments, boards, offices, commissions, agencies, institutions, and other instrumentalities of the state government. (Sec. 2743.01(A), not in the bill, and sec. 2743.02(A)(1).) State officers and employees, on the other hand, are immune from personal civil liability for their tortious acts or omissions in the performance of their duties, other than those associated with the operation of a motor vehicle, unless the acts or omissions are found to be manifestly outside the scope of their employment or official responsibilities, or unless an officer or employee acted or omitted to act with malicious purpose, in bad faith, or in a wanton or reckless manner (sec. 9.86, not in the bill). Under these provisions, even if a state officer or employee is immune from personal tort liability, the harmed party may sue the state in the Court of Claims for damages for the harm the officer or employee caused--the suit being pursued against the state or the officer's or employee's instrumentality.

The Fire Marshal's office, as an office of the state, and its officers and employees fall under these provisions. Thus, the office currently is liable for the tortious acts or omissions of its officers and employees committed or omitted within the scope of their duties or employment. And, the office's officers and employees currently possess a qualified immunity from "personal" civil liability with respect to those acts or omissions. The bill modifies these provisions with respect to the Fire Marshal's office, as described below.

Provision of fire protection or emergency medical services

Fire Marshal's office. As previously noted, the bill allows the Fire Marshal's office under certain circumstances to provide fire protection or emergency medical services to certain entities in Ohio or another jurisdiction. The bill specifies that, when the Fire Marshal's office provides these services, it is liable in a civil action for injury, death, or loss to person or property caused by the negligent operation of *any motor vehicle* by its employees upon the public roads, highways, or streets in the state when they are engaged within the scope of their employment and authority, without regard to the proximity of that operation to the office; the office has similar tort liability under current law as described above (sec. 9.60(A)(4) and (G)(1)). However, under the bill, when providing fire protection or emergency medical services, the Fire Marshal's office has the following full defenses to this liability (secs. 9.60(G)(1)(a) and (b) and 2743.02(A)(1)):

- The employee was providing fire protection and operating a motor vehicle while engaged in duty at a fire, proceeding toward a place where a fire was in progress or was believed to be in progress, or answering any other emergency, and the operation of the vehicle did not constitute willful or wanton misconduct.
- The employee was providing emergency medical services and operating a motor vehicle while responding to or completing a call for emergency medical care or treatment, the employee was holding a valid driver's license, the operation of the vehicle did not constitute willful or wanton misconduct, and the operation complied with the statutory requirement that emergency or public safety vehicles slow down as necessary for safety to traffic and proceed cautiously past red or stop signs or signals.

Employees. In addition to the "personal" civil immunity granted to state officers and employees under current law as previously discussed, the bill confers upon employees of the Fire Marshal's office, when operating a motor vehicle upon the public roads, highways, or streets in the state during the provision of fire protection or emergency medical services to a specified entity in Ohio or another jurisdiction, a "personal" immunity from civil liability for injury, death, or loss to person or property caused by that operation unless one of the following applies (sec. 9.60(G)(2)(a) and (b)):

- The operation was manifestly outside the scope of the employee's employment or official responsibilities.
- The operation constituted willful or wanton misconduct.

This personal immunity is available without regard to the proximity of the motor vehicle operation to the Fire Marshal's office (sec. 9.60(G)(2)).

Motor vehicle operation under other circumstances

Fire Marshal's office. The Fire Marshal's office, as a state entity, *generally* is liable in civil actions for injury, death, or loss to person or property caused by the negligent operation of any motor vehicle by its employees upon the public roads, highways, or streets in the state when the employees are engaged within the scope of their employment and authority. The bill codifies this currently applicable principle of legal liability in the Fire Marshal's Law itself (sec. 3737.221(B)).¹ But, an additional full defense to this liability, created by the bill, is that the employee was the Fire Marshal, the Chief Deputy Fire Marshal, or an assistant fire marshal, the operation did not constitute willful or wanton misconduct, and the employee, in operating the motor vehicle, was acting within the scope of the following powers (secs. 2743.02(A)(1) and 3737.221(B)):

- Enforcing the state fire code.
- Conducting investigations into the cause, origin, and circumstances of fires and explosions, and assisting in the prosecution of persons believed to be guilty of arson or a similar crime.
- Administering and enforcing the Fireworks Law.
- Investigating the cause, origin, and circumstances of a major fire by which property was destroyed or damaged.
- Arresting a person, or causing a person to be arrested, and charging the person with arson or a similar crime.

Employees. The bill also confers upon the Fire Marshal, the Chief Deputy Fire Marshal, and assistant fire marshals an additional "personal" immunity from liability in a civil action for injury, death, or loss to person or property caused by the operation of any motor vehicle upon the public roads, highways, or streets in the state while acting within the scope of the above-enumerated powers. This immunity does not apply, however, when the operation of the vehicle was manifestly outside the scope of the individual's employment or official responsibilities or constituted willful or wanton misconduct. And, this immunity, similar to the Fire Marshal's office's full defense, is available without regard to the

¹ The bill, however, adds the phrase "without regard to the proximity of that [motor vehicle] operation to the office of the Fire Marshal" to the current principle. This additional phrase arguably has no substantive effect.

proximity of the motor vehicle operation to that office. (Sec. 3737.221(C)(1) and (2).)

Ohio Fire Academy and other fire training program instructors

The bill provides that a person who teaches at the Ohio Fire Academy operated by the Fire Marshal's office, or in any other fire service training program that is operated by a state agency or political subdivision and that is chartered by the Executive Director of the State Board of Emergency Medical Services with the advice and consent of the Board's Firefighter and Fire Safety Inspector Training Committee, is immune from liability in a civil action for injury, death, or loss to person or property resulting from acts or omissions in the performance of the person's duties, unless an act or omission constitutes willful or wanton misconduct. Current law grants this same immunity to a person certified to teach in an emergency medical services training or continuing education program. (Sec. 4765.49(G).)

Arson Bureau and the Arson Crime Laboratory

Current law refers to the "Arson Bureau" and the "Arson Crime Laboratory" in the Fire Marshal's office and to "local arson bureaus" in political subdivisions. The bill statutorily renames the "Arson Bureau" as the "Fire and Explosion Investigation Bureau," and the "Arson Crime Laboratory" as the "Forensic Laboratory" (secs. 3737.16(A) and 3737.22(A)(8), (B), and (C)). Additionally, it changes the statutory references to local arson bureaus to "local arson, or *fire and explosion investigation*, bureaus," reflecting the fact that the specific name of the entity may differ in political subdivisions (sec. 2921.22(E)(2) and (3)). Similarly, an existing reference to political subdivision arson investigators or similar inspectors is changed by the bill to "arson, *fire*, or similar investigators" (sec. 2909.01(B)(7)).

Duty of the Chief of the Arson Bureau to investigate fires

Current law makes the Chief of the Arson Bureau responsible for the investigation of the cause, origin, and circumstances of "each fire" under the Fire Marshal's direction (sec. 3737.22(C)). The bill instead makes the Chief of the Fire and Explosion Investigation Bureau responsible for the investigation of the cause, origin, and circumstances of "fires and explosions in the state." In addition to specifically requiring investigations into explosions, the bill, by removing the term "each" may no longer require the Chief to investigate *every* fire as under current law and may not require an investigation into every explosion. (Sec. 3737.22(C).)

Creation of Bureau of Code Enforcement

The bill requires the Fire Marshal to create a Bureau of Code Enforcement as part of the Fire Marshal's office. The Bureau must consist of a Chief and additional assistant fire marshals as the Fire Marshal determines necessary for the Bureau's efficient administration. The Chief must be qualified, by education or experience, in fire inspection, fire code development, fire code enforcement, or any other similar field determined by the Fire Marshal, and in administration, including the supervision of subordinates. The Chief will be responsible, under the direction of the Fire Marshal, for fire inspection, fire code development, fire code enforcement, and any other duties delegated by the Fire Marshal. (Sec. 3737.22(D)(1).)

Inspection of buildings, structures, and other places

Current law permits the Fire Marshal or the Chief Deputy Fire Marshal under the direction of the Fire Marshal, to cause an inspection to be conducted of all buildings, structures, and other places, the condition of which may be dangerous from a fire safety standpoint to life or property, or to adjacent property (sec. 3737.22(D)). Under the bill, the Chief Deputy, in the exercise of this power, is no longer required to be under the direction of the Fire Marshal. Additionally, the inspection powers are granted to the Chief of the Bureau of Code Enforcement, and to assistant fire marshals under the direction of the Fire Marshal, the Chief Deputy, or the Chief of the Bureau of Code Enforcement. (Sec. 3737.22(D)(2).)

Examinations, permits, licenses, and certificates

Current law requires the Fire Marshal to issue permits, licenses, and certificates as authorized by statute. Additionally, the Fire Marshal must establish and collect fees for permits, licenses, and certificates so authorized. (Sec. 3737.22(A)(10) and (12).) The bill adds to these duties, respectively, the responsibility to conduct licensing examinations so authorized and to establish and collect fees for conducting the examinations (sec. 3737.22(A)(10) and (11)).

Tests of fire protection systems and devices, and fire fighting equipment

Current law *requires* the Fire Marshal to conduct tests of fire protection systems and devices, and fire fighting equipment, to determine compliance with the state fire code. However, if a building is insured against the hazard of fire, the company insuring the building instead may perform the tests. (Sec. 3737.22(A)(11).) The bill *permits* (in a relocated provision) the Fire Marshal or an insurance company to conduct these tests (sec. 3737.22(A)(11) and (H)).

Deputy of the Arson Bureau's power to request information

Current law allows a variety of individuals (including the Fire Marshal, any assistant fire marshal, any deputy of the Arson Bureau, and the chief of a municipal corporation or township fire department) to request any insurance company that has investigated or is investigating a fire loss or potential fire loss to release any information in its possession relative to that loss or potential loss. The bill removes the specific reference to any deputy of the Arson Bureau (Fire and Explosion Investigation Bureau) from the list of individuals with this power. (Sec. 3737.16(A).)²

Production of items during an inquiry or investigation

Current law allows the Fire Marshal or an assistant fire marshal to summon and compel the attendance of witnesses to testify in relation to any matter that is a proper subject of inquiry or investigation. As part of this power, they may require the production by a witness of any book, paper, or document. The bill expands the scope of the items that may be required of a witness, as well as clarifies that the items may be physical or nonphysical in form, by stating that the Fire Marshal or an assistant fire marshal may require production of any book, paper, document, "or record, regardless of physical form or characteristic." (Secs. 3737.27 and 3737.28.)

Issuance of citations and related notices

Current law

Current law allows the Fire Marshal, an assistant fire marshal, or a certified fire safety inspector to issue citations for (1) buildings, structures, tanks, containers, or vehicles that, because of certain conditions, are liable to cause fire in buildings or other property or endanger the life or safety of persons, and (2) violations of the state fire code or (apparently) associated orders. If, after an inspection or investigation, the Fire Marshal, an assistant fire marshal, or a certified fire safety inspector issues a citation, the officer must, within a reasonable time, notify the responsible person by certified mail of any penalty proposed to be assessed and of the right to appeal to the State Board of Building Appeals (SBBA) within 30 days after receiving the notice. The bill makes several changes to these provisions. (Sec. 3737.41, not in the bill, and secs. 3737.42 and 3737.43(A).)

² The Fire Marshal's office has indicated that the position of deputy of the Arson Bureau does not exist.

Notice: issuing authority and its form

As noted above, the Fire Marshal, an assistant fire marshal, or a certified fire safety inspector is currently charged with notifying the responsible person of a proposed penalty. Under the bill, this responsibility instead falls upon the "issuing authority," and the notice must be given in accordance with the Administrative Procedure Act (replacing current law's requirement that notice be given "by certified mail") (sec. 3737.43(A)).³ "Issuing authority" is defined by the bill as the office of the Fire Marshal, in the case of a citation issued by the Fire Marshal or an assistant fire marshal, or the applicable township or municipal corporation, in the case of a citation issued by a certified fire safety inspector (sec. 3737.43(C)).

The bill also modifies the information that must be conveyed in the notice. Current law only requires that the responsible person be notified of any penalty proposed to be assessed and of that person's right to appeal to the SBBA. The bill instead requires notice of the *citation*, to any possible penalty, and a right to appeal *the citation and penalty* under the Administrative Procedure Act to the SBBA. (Sec. 3737.43(A).)

The bill's references to the Administrative Procedure Act may not involve substantive changes to current law, because section 3781.19 of the Revised Code, which establishes the SBBA, currently provides that the Act's provisions addressing notice to a party of the right to a hearing, the date, time, and place of a hearing, and legal representation of an agency in a hearing, apply in the citations process under the Fire Marshal's Law, which can result in appeals to the SBBA.

Other permissible appeals

The bill allows a citation notice *issuing authority* to appeal an order of the SBBA to the court of common pleas of the county where the property that is the subject of the citation is located or to the Court of Common Pleas of Franklin County within 30 days after the SBBA renders its decision. Current Fire Marshal's Law also allows responsible persons aggrieved by orders of the SBBA to appeal, but only to the court of common pleas of the county where the property

³ *Under the Administrative Procedure Act, agencies that must comply with the Act are required to afford an opportunity for a hearing prior to the issuance of an order. The Act sets forth certain requirements concerning notice of such a hearing and establishes procedures governing the hearing itself. Additionally, the Act allows a person adversely affected by the decision of an agency to appeal the action to the appropriate court of common pleas. Appeals from Fire Marshal orders issued under the Fire Marshal's Law may be to the Court of Common Pleas of Franklin County or the court of common pleas of the county in which an aggrieved person's building is located (sec. 119.12).*

that is the subject of the citation is located, and not alternatively to the Court of Common Pleas of Franklin County. (Sec. 3737.43(B).)⁴

Related technical changes

Current law states that if an officer other than the Fire Marshal issues a citation, a copy of the citation must be furnished to the Fire Marshal. The bill makes the nonsubstantive clarification that a copy of the citation must be furnished to the Fire Marshal *if a certified fire safety inspector or an assistant fire marshal* issues the citation. (Sec. 3737.42(A).)

Additionally, under current law, if a person fails to comply with an order of the Fire Marshal, an assistant fire marshal, or a certified fire safety inspector as finally affirmed or modified on appeal by a "hearing officer," within the time fixed in the order, the Fire Marshal, assistant fire marshal, or certified fire safety inspector *apparently* may file a complaint in the court of common pleas of the county where the property is located for specified relief. The bill clarifies that the Fire Marshal, an assistant fire marshal, or a certified fire safety inspector may file such a complaint, and also removes the references to "hearing officer" and replaces them with "the SBBA." The latter change is due to the fact that the current Fire Marshal's Law refers to appeals to the SBBA. (Sec. 3737.45.)

Arrest for arson or negligent burning

If the Fire Marshal or an assistant fire marshal believes that there is evidence sufficient to charge a person with arson or a similar crime, or negligent burning, the Fire Marshal or assistant fire marshal currently *must* arrest the person or cause the person to be arrested and charged with the offense. The bill makes this power permissive. (Sec. 3737.26.)

Prosecution of arson cases

Current law requires the Fire Marshal to *prosecute* persons believed to be guilty of arson or a similar crime. The bill instead requires the Fire Marshal to *assist in the prosecution of* persons believed to be guilty of arson or a similar crime. This change is reflective of the fact that a prosecuting attorney, and not the Fire Marshal, actually prosecutes those crimes. (Sec. 3737.22(A)(4).)

The bill makes a similar change regarding the Chief of the Arson Bureau (Fire and Explosion Investigation Bureau). Current law requires the Chief to prosecute persons believed to be guilty of arson or a similar crime, under the Fire Marshal's direction. The bill instead makes the Chief responsible for *assistance in*

⁴ See Footnote 3 relative to court jurisdiction.

the prosecution of those persons under the Fire Marshal's direction. (Sec. 3737.22(C).)

Commercial drivers licensing

Under current law, individuals who operate motor vehicles that are designed or used to transport persons or property and that meet certain qualifications generally must comply with the Commercial Drivers Licensure (CDL) Law. The bill provides that the CDL Law is inapplicable to vehicles of the Fire Marshal's office operated by any of its employees while enforcing the state fire code; conducting investigations into the cause, origin, and circumstances of fires and explosions and assisting in the prosecution of persons believed to be guilty of arson or a similar crime; administering and enforcing the Fireworks Law; investigating the cause, origin, and circumstances of a major fire by which property was destroyed or damaged; arresting a person, or causing a person to be arrested, and charging the person with arson or a similar crime; or providing fire protection or emergency medical services to a specified entity in Ohio or another jurisdiction. (Sec. 4506.02(A)(9).)

Employees in the classified civil service

Under current law, all employees of the Fire Marshal's office are in the classified civil service except for the following (sec. 3737.22(B)):

- Fire Marshal
- Chief Deputy Fire Marshal
- Superintendent of the Ohio Fire Academy
- Grants administrator
- Fiscal officer
- Executive Secretary to the Fire Marshal
- Chief of the Arson Crime Laboratory (Forensic Laboratory)
- Chief of the Bureau of Fire Prevention, the Arson Bureau (Fire and Explosion Investigation Bureau), or the Bureau of Underground Storage Tanks.

The bill revises this list of employees excluded from the classified civil service to also include the legal counsel for the Fire Marshal's office, the Pyrotechnics Administrator, the Chief of the Bureau of Code Enforcement, and the

person appointed by the Fire Marshal to serve as administrator over functions concerning testing, license examinations, and the issuance of permits and certificates (sec. 3737.22(B)).

Fire Marshal

Qualifications

The Director of Commerce must appoint the Fire Marshal in a specified manner. Under current law, the Fire Marshal must possess, among other qualifications, five years of recent, progressively more responsible experience in fire inspection, fire investigation, fire protection engineering, teaching of fire safety engineering, or fire fighting. The bill adds "fire code enforcement" to the list of areas of requisite experience. (Sec. 3737.21(A)(2).)

Absence or temporary disability of the Fire Marshal or vacancy in the office

Current law does not address the issue of who temporarily fills the office when there is an absence or temporary disability of the Fire Marshal or a vacancy in the office of the Fire Marshal, although there is a procedure for the State Fire Commission and the Director of Commerce appointing a successor when a vacancy occurs (sec. 3737.21(B)). Under the bill, the Chief Deputy Fire Marshal, with the approval of the Director of Commerce, must temporarily assume the duties of the Fire Marshal when the Fire Marshal is absent or temporarily unable to carry out the duties of the office. Additionally, when there is a vacancy in the office, the Chief Deputy, with the approval of the Director of Commerce, must temporarily assume the duties of the Fire Marshal until the Director of Commerce appoints a new Fire Marshal in accordance with current law's procedure. (Sec. 3737.22(B).)

Chief Deputy Fire Marshal qualifications

Under current law, the Fire Marshal appoints the Chief Deputy Fire Marshal, who must possess, among other qualifications, five years of recent, progressively more responsible experience in fire inspection and fire code management. The bill adds "fire code enforcement" to the list of areas of requisite experience. (Sec. 3737.22(B).)

Definition of "assistant fire marshal"

Current law defines an "assistant fire marshal" as any person directly employed by the Fire Marshal who is involved in fire inspection, fire investigation, fire prevention, hazardous materials incidents, or the regulation of underground storage tank systems (hereafter, "functions") (sec. 3737.01(A)). The

bill makes several changes to this definition, which is used throughout the Fire Marshal's Law.

First, the term "directly" is eliminated, so that an assistant fire marshal is any person who is employed by the Fire Marshal. Second, instead of an assistant fire marshal being "involved in" certain listed functions, the bill specifies that an assistant fire Marshal is one who "*carries out specific duties assigned by the Fire Marshal.*" Third, the bill converts current law's list of functions into a listing of "example" duties an assistant fire marshal might be assigned to carry out. Fourth, the list of "example" duties additionally includes enforcement of the Fire Marshal's Law, the Hotels Law, and the Fireworks Law as well as "fire code enforcement" when assigned by the Fire Marshal. Fifth, the bill removes "hazardous materials incidents" from the list of "example" duties. (Sec. 3737.01(A).)

Definition of "emergency personnel" for aggravated arson

Under current law, the crime of aggravated arson is committed (among other manners) if one creates a substantial risk of serious physical harm to any person other than the offender by means of fire or explosion (sec. 2909.02(A)(1), not in the bill). The phrase "create a substantial risk of serious physical harm to any person" is defined by current law to include the creation of a substantial risk of serious physical harm to any *emergency personnel*; the latter term is defined to include, among others, the Fire Marshal, an assistant fire marshal, or an arson investigator in the Fire Marshal's office (sec. 2909.01(A) and (B)(6)). The bill modifies the definition of "emergency personnel," and thus potentially the scope of the Aggravated Arson Law, by including the Chief Deputy Fire Marshal and removing the specific reference to an arson investigator in the Fire Marshal's office. (Sec. 2909.01(A)(6).)

Burn injuries

Reports of burn injuries to the Fire Marshal's office

Current law requires (1) physicians, nurses, and limited practitioners who, outside a hospital, sanitarium, or other medical facility, attend or treat a person who has sustained a burn injury that is inflicted by an explosion or other incendiary device or that shows evidence of having been inflicted in a violent, malicious, or criminal manner and (2) managers, superintendents, or other persons in charge of a hospital, sanitarium, or other medical facility in which a person is attended or treated for a burn injury that is inflicted in such a manner, to report the burn injury to the Fire Marshal's office within three days after attending or treating the victim. Current law requires the burn injury report to be made on a form that is provided by the Fire Marshal's office and that the Fire Marshal is charged with

developing. (Secs. 2921.22(E)(2), (3), and (4) and 3737.22(A)(15).) Rather than developing a "form," the bill requires the Fire Marshal's office to develop a "uniform standard" with which the burn injury report must *comply* (secs. 2921.22(E)(4) and 3737.22(A)(14)). (See **COMMENT.**)

Definition of "burn injury"

Current law defines "burn injury," for purposes of the aforementioned reports, as any of the following (sec. 2921.22(E)(1)):

- Second or third degree burns.
- Any burns to the upper respiratory tract or laryngeal edema due to the inhalation of superheated air.
- Any burn injury or wound that may result in death.

The bill expands this definition to include any physical harm to persons caused by or as the result of the use of fireworks, novelties and trick noisemakers, and wire sparklers (sec. 2921.22(E)(1)(d)).

Ohio Fire Service Hall of Fame

The bill allows the State Fire Commission to maintain the Ohio Fire Service Hall of Fame. In maintaining the Hall of Fame, the commission must keep official commendations that recognize and commemorate exemplary accomplishments and acts of heroism by firefighters and other persons at fire-related incidents or similar events in Ohio. The Commission may adopt criteria and guidelines for selecting individuals for that recognition and commemoration, which may occur annually and include an annual awards ceremony. (Sec. 3737.03(C).)

If the Commission maintains the Hall of Fame, the Fire Marshal must preserve copies of all official commendations awarded to the recognized and commemorated individuals. Those copies must be preserved in the office space or meeting rooms that the Fire Marshal is currently required to provide to the Commission or in another location. (Sec. 3737.81(E).) The expenses incurred for the recognition and commemoration of individuals, including, but not limited to, expenses for their official commendations and an annual awards ceremony, may be paid from (1) General Assembly appropriations for that recognition and commemoration, (2) moneys available to the Fire Marshal under the Fire Marshal's Law, or (3) other funding sources available to the Commission (secs. 3737.03(C) and 3737.81(F)).

Changes to the Volunteer Fire Fighters' Dependents Fund Law

Background

The Volunteer Fire Fighters' Dependents Fund provides limited benefits to volunteer firefighters who are totally and permanently disabled while discharging their duties and to dependents of volunteer firefighters killed in the line of duty or as a result of discharging their duty. A political subdivision or fire district that maintains a volunteer fire department or employs volunteer firefighters pays the Treasurer of State an initial premium that is credited to the Fund. (Sec. 146.07(A), not in the bill.) The amount of this premium depends on the assessed property valuation of the political subdivision or fire district (sec. 146.07(A), not in the bill).⁵ The total of all initial premiums collected by the Treasurer of State is the basic capital account of the Fund, and no further contributions are required of its members until claims against the Fund have reduced it to 95% or less of its basic capital account (sec. 146.09(A), not in the bill). In that event, additional premiums must be paid by each political subdivision or fire district that maintains a volunteer fire department or employs volunteer firefighters.⁶

A private volunteer fire company that has contracted to afford fire protection to a political subdivision or fire district may elect to become a member of the Fund (sec. 146.02(B), not in the bill). The initial premium of a private company is \$500 (sec. 146.07(B), not in the bill). Additional premiums of a private company are \$150 (sec. 146.09, not in the bill).

Increased benefit payable to a disabled volunteer firefighter

Current law provides that a volunteer firefighter who is totally and permanently disabled while discharging the duties of a volunteer firefighter is to be paid a monthly benefit of \$200 from the Fund. The bill increases this benefit to \$300 per month. (Sec. 146.12(C).)

Increased benefits for certain survivors of volunteer firefighters

Under current law, when a volunteer firefighter dies while discharging the duties of a volunteer firefighter or as a result of discharging those duties, the parent, guardian, or other persons upon whom a surviving child is dependent for chief support receive from the Fund \$65 per month for each dependent child of the volunteer firefighter. This payment continues until the dependent child is 18 years old. (Sec. 146.12(B).)

⁵ Initial premiums range from \$300 to \$500.

⁶ Additional premiums range from \$90 to \$150.

The bill increases this monthly payment to \$125. It continues to require that the payment be made for each dependent child under 18 years of age, but also specifies that the payment is to be made for each dependent child under age 23 if the child is attending a post-secondary educational institution and is completing in each school year the equivalent of at least two-thirds of the full-time curriculum requirements. (Secs. 146.01(E) and 146.12(B).)

Also, under current law, if a volunteer firefighter is killed while discharging duties or dies from exposure or injury received while in the discharge of duties, the volunteer firefighter's surviving spouse, so long as he or she does not remarry, must receive \$200 per month from the Fund. The bill continues this benefit, but increases the monthly amount from \$200 to \$300. It also eliminates the stipulation that the surviving spouse not be remarried, thus permitting a surviving spouse who remarries to receive the monthly benefit. (Sec. 146.12(A).)

Technical change

Current law defines "dependent" as the surviving spouse or child under age 18 of a volunteer firefighter *regardless of financial status*. Current law also provides that the parent, guardian, or other persons upon whom a child of a volunteer firefighter is *dependent for chief support* be paid the monthly benefit from the Fund. Because these provisions are inconsistent, the bill eliminates the definition of "dependent." (Sec. 146.01(E).)

Paid leave for service as a volunteer firefighter or EMS worker

The bill grants to each state employee who is an EMT-basic, EMT-I, first responder, or paramedic, as each is defined in the Emergency Medical Services Law, and to each volunteer firefighter, as defined in the Volunteer Fire Fighters' Dependents Fund Law, 40 hours of paid leave each calendar year to use during those hours when the employee is absent from work in order to provide emergency medical service or firefighting service. An appointing authority must compensate an employee who uses this leave at the employee's regular rate of pay for those regular work hours during which the employee is absent from work. (Sec. 124.1310.)

Fire Marshal Modernization Act

The bill states that it must be known as the "Fire Marshal Modernization Act" (Section 6).

COMMENT

Current law requires certain individuals to report burn injuries to the Fire Marshal's office within three days after attending or treating the victim of the injury. A person who negligently violates this requirement is guilty of a minor misdemeanor, while a person who knowingly violates it is guilty of a misdemeanor of the second degree. (Sec. 2921.22(E)(4) and (K)(1) and (2).)

Although the bill states that the Fire Marshal must develop a "uniform standard" for the burn injury reports, it does not specifically require the Fire Marshal to publish this standard or, in developing it, to follow the "rule-making" provisions in either the Administrative Procedure Act or R.C. 111.15.⁷ The bill, thus, makes it possible that a person who is required to report burn injuries may be unaware of the standard the Fire Marshal develops unless the person inquires of the Fire Marshal. (Secs. 2921.22(E)(4) and 3737.22(A)(14).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-22-01	p. 396
Reported, S. State & Local Gov't & Veterans Affairs	---	---

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⁷ There are two general statutory rule-making procedures: one in R.C. Chapter 119. and the other in R.C. section 111.15. Under both procedures, rules must be filed with the Secretary of State and the Legislative Service Commission. Additionally, either the full text of, or a reference to, the rule is published in the Administrative Code and thus available to the public (sec. 103.05).