

SESSION OF 2010

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2671

As Amended by House Committee of the Whole

Brief*

HB 2671, as amended, would amend the law governing the investigation authority of the State Fire Marshal and would transfer the office of the State Fire Marshal to the Insurance Department.

The bill would grant authority certified to the Kansas State Fire Marshal, the State Fire Marshal's deputies, and fire prevention personnel assigned investigation duties who are members of a fire department who have been certified as fire investigators to investigate any other crimes associated with or in conjunction with arson or attempted arson or attempt to defraud an insurance company.

A technical amendment also is made to a statute cited in the provision applying to courses prescribed for law enforcement officers (KSA 74-5607).

The bill also would transfer the Office of the State Fire Marshal to the Insurance Department and would establish the Division of the State Fire Marshal, within the Department. The State Fire Marshal, under the supervision of the Insurance Commissioner, would administer the Division. Under the bill, the Insurance Commissioner would appoint the State Fire Marshal, subject to confirmation by the Senate, and the State Fire Marshal would serve at the pleasure of the Commissioner. A person appointed to the position of State Fire Marshal would be required to have a knowledge of building construction and, at the time of the appointment, have had at a minimum of five

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

years of experience in fire safety inspection and investigation. The State Fire Marshal would be required to maintain an office in the City of Topeka.

The bill would abolish the State Fire Marshal's Office (created by KSA 75-1510 through 75-1517). The bill also would transfer to, confer, and impose all of the powers, duties and functions of the existing State Fire Marshal's Office and the existing State Fire Marshal to the Kansas Insurance Department and the Division of [the] State Fire Marshal established by the bill. Among the provisions associated with the transfer, the bill provides that all rules and regulations of the State Fire Marshal's Office or the State Fire Marshal in existence on the effective date of this act (July 1, 2010) shall continue to be effective and shall be deemed to be duly adopted rules and regulations of the Insurance Department and the State Fire Marshal established by this act (until those regulations have been revised, amended, revoked or nullified). The bill also provides that employers and officers of the Office of the State Fire Marshal who are transferred under the bill who are deemed necessary (by the Insurance Commissioner and State Fire Marshal) to perform the powers, duties, and functions of the Division of the State Fire Marshal be transferred and become officers and employees of the Insurance Department.

The bill would amend existing law to authorize the Insurance Commissioner to appoint the State Fire Marshal, pursuant to the provisions established in this bill (KSA 2009 Supp. 40-110) and update the laws governing the appointment of an assistant attorney general who serves as the attorney for the State Fire Marshall to include approval of the appointment and annual salary requirements by the Insurance Commissioner (in addition to the State Fire Marshal). The Assistant Attorney General would serve as the legal advisor for the Division of the State Fire Marshal (KSA 75-1515 and 75-1516).

The provisions of the bill that apply to the investigative authority of the State Fire Marshal will become effective upon publication in the *Kansas Register*. The provisions applicable

to the transfer of the office of the State Fire Marshal and establishment of a division within the Kansas Insurance Department will become effective on and after July 1, 2010.

Background

Under the current law, the State Fire Marshal, the Marshal's deputies and full-time fire prevention personnel (personnel are members of a paid fire department) are given the authority to make arrests, carry firearms and conduct searches and seizures while investigating any fire or explosion in which arson or attempted arson is suspected or in which there is an attempt or suspected attempt to defraud an insurance company.

The bill (HB 2671) was introduced by the House Committee on Appropriations. The Chief of Investigations for the Kansas State Fire Marshal's Office testified in support of the bill and indicated that the bill would improve the law enforcement authority for fire investigators and allow more efficiency and communication with other law enforcement officers. The representative requested amendments to the bill to specify certification as a fire investigator and to allow part time or volunteer personnel that have the same training and requirements to have an opportunity to serve as certified fire investigators. The amendments are necessary, the representative noted, to accommodate changes being made to state regulations that cover fire investigation. The Kansas Chapter of the International Association of Arson Investigators (KCIAAI) stated that the organization believes that any part-time or full-time investigators have law enforcement authority based on the needs of their community; the KCIAAI representative supported the proposed amendments. There were no opponents to the bill present at the Committee hearing.

The House Committee on Insurance recommended an amendment to delete references to "full-time" and "paid" as the terms apply to fire prevention personnel and to clarify the personnel's certification as fire investigators. The amendment

was requested by a representative of the Kansas State Fire Marshal's Office.

The House Committee of the Whole amended the bill to include provisions that would abolish the State Fire Marshal's Office (as established by KSA 75-1510 through 75-1517), establish the Division of the State Fire Marshal with the Insurance Department, and transfer the powers, duties, and functions of the existing Office to the Department. The amendment inserts the provisions of 2010 HB 2444 (as amended by House Committee on Federal and State Affairs).

The fiscal note prepared by the Division of the Budget on the original bill indicates that the Kansas State Fire Marshal states that passage of the bill would have no fiscal effect to agency operations.

The fiscal note for the introduced version of HB 2444 states that the Kansas Insurance Department indicates there would be no fiscal effect to the Department's budget. The Department currently collects insurance premium revenue on behalf of the Fire Marshal and it reports that supervision of the new division would not require any additional resources. The bill would make no changes to the Department's expenditures and does not change the distribution of fire insurance premiums. The Office of the State Fire Marshal states that the bill does not appear to have any effect to the agency's responsibilities or budget, as it just transfers the agency to the Insurance Department.