CHAPTER 9

State Fire Marshal

ARTICLE 1

State Fire Marshal

**SECTION 23‑9‑10.** Transfer of office of State Fire Marshal to Department of Labor, Licensing and Regulation; duties and responsibilities of Marshal; qualifications.

 Effective July 1, 1979, the Division of State Fire Marshal is hereby transferred to the Department of Labor, Licensing and Regulation to operate as a division under the Office of Director. The State Fire Marshal shall have all of the duties and responsibilities formerly exercised by the Chief Insurance Commissioner as State Fire Marshal, ex officio. Notwithstanding another provision of law, after January 20, 2011, the State Fire Marshal shall have a master’s degree from an accredited institution of higher learning and at least four years experience in fire prevention and control or a bachelor’s degree and eight years experience in fire prevention and control. The Governor shall appoint the State Fire Marshal who shall serve as the Deputy Director of the Division of Fire and Life Safety.

HISTORY: 1962 Code Section 37‑86; 1966 (54) 2424; 1973 (58) 793; 1979 Act No. 190 Section 4; 1993 Act No. 181, Section 31993 Act No. 181, Section 344; 2007 Act No. 89, Section 2, eff June 20, 2007.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

Effect of Amendment

The 2007 amendment, in the second sentence, substituted “Notwithstanding another provision of law, after January 20, 2011, the” for “The”; and, at the end of the fourth sentence added “who shall serve as the Deputy Director of the Division of Fire and Life Safety”.

CROSS REFERENCES

Constitutional provision regarding selection, duties, and compensation of law enforcement officials, see SC Const, Art 5, Section 24.

Duties of the State Fire Marshal with respect to the Firemen’s Insurance and Inspection fund, see Section 23‑9‑350.

Duties of the State Fire Marshal with respect to the South Carolina Explosives Control Act, see Sections 23‑36‑40 et seq.

Fire Marshal Division of Budget & Control Board incorporated into the Department of Labor, Licensing, and Regulation, see Section 1‑30‑65.

Requirement that fire inspectors file quarterly fire inspection reports with the State Fire Marshal, see Section 23‑9‑360.

Requirement that local fire departments file an annual certificate of existence with the State Fire Marshal, on a form provided by him, see Section 23‑9‑380.

Library References

States 45.

Westlaw Topic No. 360.

C.J.S. States Sections 145 to 146, 157 to 161, 249.

Attorney General’s Opinions

The State Fire Marshal and the State Fire Commission have no authority to supervise, control, or require conformance with regulations promulgated by the State Board of Pyrotechnic Safety regarding the sale and storage of pyrotechnics. 1982 Op. Atty Gen, No. 82‑18, p 24.

The Director of General Services has authority to change the title of Fire Marshal to Fire and Safety Inspector. 1976‑77 Op. Atty Gen, No. 77‑228, p 173.

**SECTION 23‑9‑20.** Additional duties of State Fire Marshal.

 The State Fire Marshal shall:

 (1) supervise enforcement of the laws and regulations of the Liquefied Petroleum Gas Board and the South Carolina Hydrogen Permitting Program; and

 (2) shall employ and supervise personnel necessary to carry out the duties of his office.

HISTORY: 1962 Code Section 37‑86.1; 1969 (56) 77; 1979 Act No. 190 Section 5; 1987 Act No. 155, Section 11; 2010 Act No. 254, Section 2, eff upon approval (became law without the Governor’s signature on June 14, 2010).

Effect of Amendment

The 2010 amendment rewrote this section.

CROSS REFERENCES

Duties of the State Fire Marshal with respect to the Firemen’s Insurance and Inspection fund, see Section 23‑9‑350.

Requirement that fire inspectors file quarterly fire inspection reports with the State Fire Marshal, see Section 23‑9‑360.

Requirement that local fire departments file an annual certificate of existence with the State Fire Marshal on a form provided by him, see Section 23‑9‑380.

Library References

States 68.

Westlaw Topic No. 360.

C.J.S. States Sections 224 to 225, 240 to 249, 252.

**SECTION 23‑9‑25.** Volunteer Strategic Assistance and Fire Equipment Program; purpose; administration of grants.

 (A) It is the purpose of this section to create the “Volunteer Strategic Assistance and Fire Equipment Program” (V‑SAFE).

 (B) This section is contingent upon the General Assembly appropriating funds for the offering of grants of not more than thirty thousand dollars to eligible volunteer and combination fire departments for the purpose of protecting local communities and regional response areas from incidents of fire, hazardous materials, terrorism, and to provide for the safety of volunteer firefighters.

 (C)(1) As contained in this section:

 (a) “chartered fire department” means a public or governmental sponsored organization providing fire suppression activities with a minimum of a Class 9 rating from the Insurance Services Office;

 (b) “chartered volunteer fire department” means a fire department whose personnel serve for no compensation or are paid on a per‑call basis; and

 (c) “chartered combination fire department” means a fire department with both members who are paid and members who serve as volunteer firefighters.

 (2) Chartered volunteer fire departments and chartered combination fire departments with a staffing level that is at least fifty percent volunteer are eligible to receive grants pursuant to this section. A chartered fire department that receives a grant must comply with the firefighter registration provisions of Act 60 of 2001 and sign the statewide mutual aid agreement with the South Carolina Emergency Management Division.

 (D) The amount of the grants awarded shall not exceed thirty thousand dollars per year for each eligible chartered fire department, with no matching or in‑kind money required. A chartered fire department may be awarded only one grant in a three‑year period.

 (E) The grant money received by a chartered fire department must be used for the following purposes:

 (1) fire suppression equipment;

 (2) self‑contained breathing apparatus;

 (3) portable air refilling systems;

 (4) hazardous materials spill leak detection, repair, and recovery equipment;

 (5) protective clothing and equipment;

 (6) new and used fire apparatus;

 (7) incident command vehicles;

 (8) special operations vehicles;

 (9) training;

 (10) rescue equipment;

 (11) medical equipment;

 (12) decontamination equipment; and

 (13) safety equipment.

 (F)(1) The State Fire Marshal shall administer the grants in conjunction with a peer‑review panel.

 (2) The peer‑review panel shall consist of nine voting members who shall serve without compensation. Seven members must be fire chiefs from each of the seven regions of the State as defined by the State Fire Marshal. The Chairman of the House Ways and Means Committee shall appoint fire chiefs from Regions 1, 2, and 7. The Chairman of the Senate Finance Committee shall appoint fire chiefs from Regions 3, 4, and 6. The Governor shall appoint one fire chief from Region 5 and one fire chief from the State at large. The State Fire Marshal also shall serve as a member. The President of the South Carolina State Firefighters’ Association shall serve as a nonvoting member and chairman of the committee.

 (3) An applicant for grant money must submit justification for their project that provides details regarding the project and the project’s budget, the benefits to be derived from the project, the applicant’s financial need, and how the project would affect the applicant’s daily operations in protecting lives and property within their community. Each application must be judged on its own merit. The panelists must consider all expenses budgeted, including administrative or indirect costs, as part of the cost‑benefit review. An applicant may demonstrate cost‑benefit by describing, as applicable, how the grant award will:

 (a) enhance a regional approach that is consistent with current capabilities and requests of neighboring organizations or otherwise benefits other organizations in the region;

 (b) implement interoperable communications capabilities with other local, state, and federal first responders and other organizations;

 (c) allow first responder organizations to respond to all hazards, including incidents involving seismic, atmospheric, or technological events, or chemical, biological, radiological, nuclear, or explosive incidents, as well as fire prevention and suppression.

 Applications that best address the grant funding priorities shall score higher than applications that are inconsistent with the priorities. During the panel review process, panelists shall provide a subjective but qualitative judgment on the merit of each request.

 Panelists shall evaluate and score the proposed project’s clarity, including the project’s budget detail, the organization’s financial need, the benefits that would result from an award relative to the cost, and the extent to which the grant would enhance daily operations or how the grant will positively impact an organization’s ability to protect life and property. Each element shall be equally important for purposes of the panelists’ scores. Panelists must review each application in its entirety and rate the application according to the evaluation criteria.

 Applications shall be evaluated by the panelists relative to the critical infrastructure within the applicant’s area of first‑due response. Critical infrastructure includes any system or asset that, if attacked or impacted by a hazardous event, would result in catastrophic loss of life or catastrophic economic loss. Critical infrastructure includes public water or power systems, major business centers, chemical facilities, nuclear power plants, major rail and highway bridges, petroleum and natural gas transmission pipelines or storage facilities, telecommunications facilities, or facilities that support large public gatherings such as sporting events or concerts. Panelists shall assess the infrastructure and the hazards confronting the community to determine the benefits to be realized from a grant to the applicant.

 Applicants that falsify their application, or misrepresent their organization in any material manner, shall have their applications deemed ineligible and referred to the Attorney General for further action, as the Attorney General deems appropriate.

 (4) The project period for any award grant shall be twelve months from the date of the award. Any equipment purchased with the grant must meet all mandatory regulatory requirements, as well as, all state, national, and Department of Homeland Security adopted standards.

 Award recipients must agree to:

 (a) perform, within the designated period of performance, all approved tasks as outlined in the application;

 (b) retain grant files and supporting documentation for three years after the conclusion and close out of the grant or any audit subsequent to close out;

 (c) ensure all procurement actions are conducted in a manner that provides, to the maximum extent possible, open and free competition. In doing so, the recipient must follow its established procurement law when purchasing vehicles, equipment, and services with the grant. If possible, the recipient must obtain at least two quotes or bids for the items being procured and document the process used in the grant files. Sole‑source purchasing is not an acceptable procurement method except in circumstances allowed by law;

 (d) submit a performance report to the peer‑review panel six months after the grant is awarded. If a grant’s period of performance is extended for any reason, the recipient must submit performance reports every six months until the grant is closed out. At grant closeout, the recipient must report how the grant funding was used and the benefits realized from the award in a detailed final report. An accounting of the funds also must be included; and

 (e) make grant files, books, and records available, if requested by any person, for inspection to ensure compliance with any requirement of the grant program.

 (5) A recipient that completes the approved scope of work prior to the end of the performance period, and still has grant funds available, may:

 (a) use the greater of one percent of their award amount or three hundred dollars to continue or expand, the activities for which they received the award;

 (b) use excess funds to create or expand, a fire or injury prevention program. Excess funds above the amounts discussed in subitem (a) must be used for fire or injury prevention activities or returned to the program. In order to use excess funds for fire or injury prevention activities, a recipient must submit an amendment to its grant. The amendment request must explain fire or injury prevention efforts currently underway within the organization, where the use of excess funds would fit within the existing efforts, the target audience for the fire or injury prevention project and how this audience was identified, and how the effectiveness of the requested fire or injury prevention project will be evaluated;

 (c) use a combination of subitems (a) and (b); or

 (d) return excess funds to the program. To return the excess funds, a recipient must close out its award and state in the final performance report that the remaining funds are not necessary for the fulfillment of grant obligations. The recipient also must indicate that it understands that the funds will be unavailable for future expenses.

 (6) The State Fire Marshal shall:

 (a) develop a grant application package utilizing the established guidelines;

 (b) establish and market a written and electronic version of the grant application package;

 (c) provide an annual report of all grant awards and corresponding chartered fire department purchases to the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee, and the Governor;

 (d) provide all administrative support to the peer‑review panel; and

 (e) provide a grants web page for electronic applications.

 (G) Two percent of these funds may be awarded to the South Carolina State Firefighters’ Association annually for the express purpose of establishing and maintaining a recruitment and retention program for volunteer firefighters. The association must apply for the grant to the peer‑review panel.

HISTORY: 2009 Act No. 74, Section 1, eff June 16, 2009.

**SECTION 23‑9‑30.** Resident fire marshals; persons who may act under authority of State Fire Marshal.

 (a) The chief of any organized fire department or county fire marshal is ex officio resident fire marshal; however, this chapter does not repeal, amend, or otherwise affect Chapter 25 of Title 5.

 (b) All powers and duties vested in the State Fire Marshal may be exercised or discharged by any deputy state fire marshal, county fire marshal, or resident fire marshal within the area of his service, or any state or local governmental employee certified by the State Fire Marshal whose duties include inspection and enforcement of state or local fire safety codes and standards, acting under the authority of the State Fire Marshal.

HISTORY: 1962 Code Section 37‑80; 1958 (50) 1862; 1963 (53) 557; 1973 (58) 793; 1986 Act No. 347, Section 3; 1987 Act No. 155, Section 12.

CROSS REFERENCES

Prevention of fires in municipalities, generally, see Sections 5‑25‑10 et seq.

Transfer of office of State Fire Marshal to Department of Labor, Licensing and Regulation, duties and responsibilities of Marshal, qualifications, see Section 23‑9‑10.

Library References

States 74.

Westlaw Topic No. 360.

C.J.S. States Sections 229, 249 to 250, 252.

Attorney General’s Opinions

A fire marshal or arson investigator who is a member of a lawfully and regularly organized fire department and who also holds a law enforcement commission, does not violate the dual office holding provision of the South Carolina Constitution. S.C. Op.Atty.Gen. (March 18, 2014) 2014 WL 1398590.

No dual office holding violation for person elected to the Simpsonville City Council and who continues to serve as a firefighter for the City of Greer Fire Department and maintains a certification from the State Fire Marshal. S.C. Op.Atty.Gen. (Sept. 9, 2013) 2013 WL 5291571.

There would not be any dual office holding violations for an individual both serving as a member of a fire department and holding either law enforcement credentials or a position as a fire/arson investigator certified by the State Fire Marshal; however, an individual holding law enforcement credentials who is simultaneously holding a position as a fire/arson investigator certified by the State Fire Marshal, thereby exercising the sovereign power of the State, would be dual office holding. S.C. Op.Atty.Gen. (July 19, 2012) 2012 WL 3142775.

The Director of General Services has authority to change the title of Fire Marshall to Fire and Safety Inspector. 1976‑77 Op. Atty Gen, No. 77‑228, p 173.

**SECTION 23‑9‑35.** Handicapped ramps; fees and permits.

 The Division of State Fire Marshall is authorized to construct and place handicapped ramps without incurring fees or securing a permit for the construction and placement of handicapped ramps.

HISTORY: 2006 Act No. 341, Section 2, eff June 10, 2006.

**SECTION 23‑9‑40.** Duty of State Fire Marshal to enforce certain laws and ordinances.

 It shall be the duty of the State Fire Marshal to enforce all laws and ordinances of the State, and the several counties, cities, and political subdivisions thereof, with reference to the following:

 (a) The prevention of fires;

 (b) The storage, sale and use of combustibles and explosives;

 (c) The installation and maintenance of automatic or other fire alarm systems and fire extinguishing equipment;

 (d) The construction, maintenance and regulation of fire escapes;

 (e) The means and adequacy of exits, in case of fire, from factories, asylums, hospitals, churches, schools, halls, theaters, amphitheaters and all other places in which numbers of persons work, live or congregate from time to time for any purpose;

 (f) Investigation of the cause, origin and circumstances of fire.

HISTORY: 1962 Code Section 37‑81; 1952 Code Section 37‑81; 1947 (45) 322; 1960 (51) 1646; 1963 (53) 557.

CROSS REFERENCES

Local building inspectors inspecting and ordering correction of inflammable conditions, see Sections 5‑25‑360 to 5‑25‑390.

Right of local building inspector and Chief Insurance Commissioner to enter premises, see Section 5‑25‑340.

Library References

States 68.

Westlaw Topic No. 360.

C.J.S. States Sections 224 to 225, 240 to 249, 252.

Attorney General’s Opinions

Fire Marshal may not promulgate building code. The State Fire Marshal does not have legal authority to promulgate a building code as part of fire prevention and life safety regulations. 1965‑66 Op. Atty Gen, No. 2139 p 267.

Section 23‑9‑40 does not confer upon the State Fire Marshal the authority to issue any order or temporary ban on the use of legal fireworks. 1994 Op. Atty Gen, No. 94‑50, p. 113.

**SECTION 23‑9‑45.** Class D fire equipment dealer license or fire equipment permit; proof of training; fees.

 (A) An applicant for a Class D fire equipment dealer license or a Class D fire equipment permit, or both, shall provide proof of a current manufacturer’s training certificate for each type of preengineered fire extinguishing system. However, if the applicant can provide proof of a current manufacturer’s training certificate for at least one type of preengineered fire extinguishing system, the applicant may submit a sworn affidavit for each additional type of preengineered fire extinguishing system for which a license or permit, or both, is requested.

 (B) The affidavit shall attest to the applicant’s ability to obtain the proper manufacturer’s installation and maintenance manuals and provide testament that all installations and maintenance shall be performed in compliance with the manufacturer’s installation and maintenance manuals, with the exception of the manufacturer’s training certificate, and in compliance with National Fire Protection Association standards 10, 11, 12, 13, 17, 17A, 96, 211, and 2001, as they exist as of January 1, 2006, including the use of replacement parts listed in conformity with National Fire Protection Association standards. Any violation of the affidavit is grounds for the revocation of the Class D fire equipment dealer license or the Class D fire equipment permit, or both.

 (C) The Division of State Fire Marshal is authorized to charge a license fee for all class fire equipment licenses issued by the Division of State Fire Marshal and a permit fee for all class fire equipment permits issued by the Division of State Fire Marshal. Fees may be set by regulation not more than once each two years and must be based upon the costs of administering the provisions of this chapter and must give due regard to the time spent by division personnel in performing duties. The initial fees established by the State Fire Marshal may not exceed one hundred dollars for licenses and twenty‑five dollars for permits.

HISTORY: 1991 Act No. 72, Section 1; 2006 Act No. 341, Section 1, eff June 10, 2006.

Effect of Amendment

The 2006 amendment designated the first two sentences as subsection (A), the third and fourth sentences as subsection (B), and the fifth sentence as subsection (C); in subsection (B), in the first sentence deleted “manufacturer’s parts and” preceding “provide” and “complete” preceding “compliance” and added the final clause starting with “, and in complete compliance with”; and, in subsection (C), in the first sentence deleted “of one hundred dollars” following “license fee” and “of twenty‑five dollars” following “permit fee” and added the second and third sentences relating to fees.

Library References

Consumer Protection 6.

Westlaw Topic No. 92H.

C.J.S. Credit Reporting Agencies; Consumer Protection Sections 29 to 31, 33 to 39, 60 to 65.

**SECTION 23‑9‑50.** Authority to inspect buildings or premises.

 (a) The State Fire Marshal shall have authority at all times of the day or night, in the performance of duties imposed by this chapter, to enter upon and examine any building or premises where any fire has occurred and other buildings or premises adjoining. Provided, that the Fire Marshal may enter a private dwelling or premise only with the permission of the owner or occupant, unless there is probable cause to believe that a violation of the provisions respecting fire laws exists, that there exists imminent danger to the occupants thereof or arson.

 (b) The State Fire Marshal shall have authority at any reasonable hour to enter into any public building or premises or any building or premises used for public purposes to inspect for fire hazards.

 (c) Nothing in this section shall restrict the authority of the State Fire Marshal from investigating any premises which has been damaged by a fire of suspicious cause within a reasonable period of time after the occurrence of such fire.

HISTORY: 1962 Code Section 37‑82; 1952 Code Section 37‑82; 1947 (45) 322; 1963 (53) 557; 1975 (59) 613.

Library References

Fires 9.

Westlaw Topic No. 175.

C.J.S. Fires Sections 20 to 23.

Attorney General’s Opinions

Until a court so rules in this State, or there is specific authority for a fire inspector who is not a commissioned law enforcement officer or who does not possess any law enforcement authority generally, a fire inspector would not be authorized to sign, as an affiant, a criminal search warrant. S.C. Op.Atty.Gen. (Jan. 14, 2010) 2010 WL 440999.

**SECTION 23‑9‑60.** Duty to require conformance with minimum fire prevention and protection standards.

 The State Fire Marshal shall require conformance with the fire prevention and protection standards based upon nationally recognized standards as may be prescribed by law or regulation for the prevention of fires and the protection of life and property. The Division of the State Fire Marshal shall have the authority to promulgate fire prevention and protection regulations based upon nationally recognized standards for the protection of life and property of the residents of the State from fire.

HISTORY: 1962 Code Section 37‑82.1; 1963 (53) 557; 1979 Act No. 190 Section 6; 1986 Act No. 347, Section 4; 1993 Act No. 181, Section 346.

CROSS REFERENCES

Requirement that owner and department be furnished written certification that installation meets requirements of this section, see S.C. Regulations R. 61‑16.

Library References

Health 393.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 51 to 56, 58 to 62.

Attorney General’s Opinions

The State Fire Marshal and the State Fire Commission have no authority to supervise, control, or require conformance with regulations promulgated by the State Board of Pyrotechnic Safety regarding the sale and storage of pyrotechnics. 1982 Op. Atty Gen, No. 82‑18, p 24.

NOTES OF DECISIONS

In general 2

Validity 1

1. Validity

Authority granted Fire Marshal under Section 23‑9‑60 is not unconstitutional delegation of legislative power. Johnson v. Roberts (S.C. 1977) 269 S.C. 119, 236 S.E.2d 737, appeal dismissed 98 S.Ct. 1222, 434 U.S. 1055, 55 L.Ed.2d 755.

2. In general

Use of words “nationally recognized good practice for safeguarding to reasonable degree of life and property” in Fire Prevention Code is not inconsistent with statutory requirement of Section 23‑9‑60 that regulations conform to nationally recognized minimum standards for prevention of fire. Johnson v. Roberts (S.C. 1977) 269 S.C. 119, 236 S.E.2d 737, appeal dismissed 98 S.Ct. 1222, 434 U.S. 1055, 55 L.Ed.2d 755.

Phrase “nationally recognized standards” in Section 23‑9‑60 means standards recognized or adopted in at least the majority of states. Johnson v. Roberts (S.C. 1977) 269 S.C. 119, 236 S.E.2d 737, appeal dismissed 98 S.Ct. 1222, 434 U.S. 1055, 55 L.Ed.2d 755.

No basis for discriminatory classification charge found in Fire Marshal’s enforcement of regulation requiring attendant at self‑service gasoline stations, but not at convenience stores with self‑service pumps, since latter maintains attendant while business is open to public, and failure of this attendant to supervise dispensation of gasoline would constitute violation of regulation. Johnson v. Roberts (S.C. 1977) 269 S.C. 119, 236 S.E.2d 737, appeal dismissed 98 S.Ct. 1222, 434 U.S. 1055, 55 L.Ed.2d 755.

**SECTION 23‑9‑65.** Automatic fueling clips on self‑service gasoline dispensers permitted.

 Automatic fueling clips on self‑service gasoline dispensers that are permitted in the National Fire Protection Association Pamphlet 30A, 1987 Edition, are permitted to be used in this State. The Division of the State Fire Marshal shall promulgate regulations necessary to implement the provisions of this section.

HISTORY: 1989 Act No. 200, Section 1; 1993 Act No. 181, Section 347.

Library References

Consumer Protection 6.

Westlaw Topic No. 92H.

C.J.S. Credit Reporting Agencies; Consumer Protection Sections 29 to 31, 33 to 39, 60 to 65.

**SECTION 23‑9‑70.** Order and appeals from order of State Fire Marshal to remove or remedy a fire hazard; assessments, appeals and execution of order of repair upon noncompliance by owner; injunctive relief.

 Whenever the State Fire Marshal, deputy or resident fire marshal shall find, pursuant to examination as provided in Section 23‑9‑50 of this chapter, any building or other structure which, for any cause, is especially liable to fire and which is so situated as to endanger lives or other property, or is deficient in fire or life protection, an order shall be issued in writing directing the defect to be removed or remedied, service of such order shall be made as provided in this chapter and such occupant or owner shall forthwith comply with the terms thereof. If such order is issued by any deputy or resident fire marshal, such occupant or owner may, within thirty days, appeal to the State Fire Marshal, who shall, within ten days of receiving notice of the appeal, during which time the order appealed from shall be stayed, review the order and file his decision. The appeal period shall not be allowed if the building or any other structure is deemed to be an imminent danger pursuant to Section 23‑9‑160. A person who feels himself aggrieved by any order or affirmed order of the State Fire Marshal may, within thirty days after the making or affirming of such order, appeal to an administrative law judge, as provided under Article 5, Chapter 23, Title 1, for review of such order and it shall be heard at the first convenient day. In the event a final order entered pursuant to this chapter is not complied with within a period of thirty days from date of service of such final order then the State Fire Marshal shall cause the hazard to be remedied by repair or demolition, and all offensive materials and dangerous conditions removed, at the joint and several expense of the occupant or owner of such building or premises. An itemized statement of costs and expenses shall be furnished the occupant or owner of the premises and the statement shall be satisfied within a period of thirty days, failing which, upon ten days further notice the State Fire Marshal may assess such costs and expenses. Any party aggrieved by an assessment order may appeal to an administrative law judge, as provided under Article 5, Chapter 23, Title 1, within a period of ten days from service of such order of assessment. Failing appeal, the order of assessment herein provided shall be filed with the clerk of court of the county wherein such property is located and shall be satisfied by execution and levy as a final judgment duly entered. Provided, however, that in addition to the enforcement procedures authorized in this section, the State Fire Marshal may, when a final order has been issued directing a defect to be removed or remedied and such order is not complied with within thirty days or a greater time if specified in such order, apply to an administrative law judge, as provided under Article 5, Chapter 23, Title 1, for an injunction to compel the defect to be removed or remedied and an administrative law judge, if it shall find, that such defect constitutes a dangerous hazard to life or property as set forth in this section, may exercise its injunctive powers to obtain compliance with the order of the State Fire Marshal.

HISTORY: 1962 Code Section 37‑82.2; 1963 (53) 557; 1969 (56) 79; 1993 Act No. 181, Section 348; 2011 Act No. 37, Section 1, eff June 7, 2011.

Effect of Amendment

The 2011 amendment, in the second sentence, substituted “thirty days” for “twenty‑four hours” and inserted “of receiving notice of the appeal”; inserted the third sentence; and in the new fourth sentence, substituted “A” for “Provided, however, that any”.

Library References

Health 393.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 51 to 56, 58 to 62.

NOTES OF DECISIONS

In general 1

1. In general

Regulation requiring attendant at self‑service gas stations was not beyond enforcement powers granted by South Carolina Code Section 37‑82.2 (1962) [Section 23‑9‑70 (1976)] since term “defect,” as used in statute, embraces deficiency in fire or life protection whether caused from structural condition of building or failure to maintain required personnel and other safety measures. Johnson v. Roberts (S.C. 1977) 269 S.C. 119, 236 S.E.2d 737, appeal dismissed 98 S.Ct. 1222, 434 U.S. 1055, 55 L.Ed.2d 755. Automobiles 395; Health 392

**SECTION 23‑9‑80.** Service of order or penalty assessment.

 The service of any order or penalty assessment as provided in this chapter shall be made by either delivering a true copy to the occupant or owner personally, or by registered or certified mail directed to the last known address of such parties, and, in case of service by mail, affixing a copy thereof in a conspicuous place on the door to the entrance of the premises.

HISTORY: 1962 Code Section 37‑82.3; 1963 (53) 557.

Library References

Health 393.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 51 to 56, 58 to 62.

**SECTION 23‑9‑90.** Power to subpoena witnesses and take testimony in fire investigation; perjury.

 In the conduct of any investigation into the cause, origin, or loss resulting from any fire, the State Fire Marshal shall have the same power and rights relative to securing the attendance of witnesses and the taking of testimony under oath as is conferred upon the Director of the Insurance Department or his designee under Section 38‑3‑180. False swearing by any such witness shall be deemed to be perjury and shall be subject to punishment as such.

HISTORY: 1962 Code Section 37‑82.4; 1963 (53) 557; 1993 Act No. 181, Section 349.

Library References

Perjury 4.

Witnesses 7.

Westlaw Topic Nos. 297, 410.

C.J.S. Perjury Sections 6, 21 to 22, 24.

C.J.S. Witnesses Sections 2, 20 to 31.

**SECTION 23‑9‑100.** Report of incendiary fires to police.

 If, as the result of any such investigation or because of any information received by him, the State Fire Marshal is of the opinion that a fire is the result of the act of an incendiary the matter shall be brought to the attention of the local law enforcement officers having jurisdiction of the matter.

HISTORY: 1962 Code Section 37‑82.5; 1963 (53) 557.

**SECTION 23‑9‑110.** File of fire reports; public inspection; destruction.

 The State Fire Marshal shall keep on file in his office all reports of fires made to him pursuant to this chapter. Such records shall at all times during business hours be open to public inspection; except, that any testimony taken in a fire investigation may, in the discretion of the State Fire Marshal, be withheld from public scrutiny. The State Fire Marshal may destroy any such report after three years from its date.

HISTORY: 1962 Code Section 37‑82.6; 1963 (53) 557.

**SECTION 23‑9‑120.** Enforcement of chapter.

 The State Fire Marshal shall see that the provisions of this chapter and regulations promulgated thereunder are faithfully executed.

HISTORY: 1962 Code Section 37‑82.7; 1963 (53) 557; 1979 Act No. 190, Section 7.

**SECTION 23‑9‑130.** Dissemination of information relating to fires.

 The State Fire Marshal may from time to time disseminate within this State information concerning the causes, prevention and reduction of damage from fire.

HISTORY: 1962 Code Section 37‑82.8; 1963 (53) 557.

**SECTION 23‑9‑140.** Expenses of forms, posters, reports and the like.

 All forms, blanks, circulars, posters and such reports as may be required pursuant to the provisions of this chapter shall be furnished at the expense of the State.

HISTORY: 1962 Code Section 37‑82.10; 1963 (53) 557.

Library References

States 123.

Westlaw Topic No. 360.

C.J.S. States Sections 377 to 380.

**SECTION 23‑9‑150.** “Unsafe buildings” defined; procedure for procuring the repair or demolition of unsafe buildings.

 All buildings or structures referred to in Section 23‑9‑40, except single‑family dwellings, duplexes or one‑story rooming houses, which are unsafe or not provided with adequate egress, or which constitute a fire hazard or are otherwise dangerous to human life, or which in relation to existing use constitute a hazard to safety or health by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment are, severally in contemplation of this section, unsafe buildings. The use and occupancy of all such unsafe buildings is hereby declared illegal and such unsafe conditions shall be corrected by repair, rehabilitation or demolition in accordance with the following procedure:

 (1) Whenever the State Fire Marshal shall find any building or structure or portion thereof to be unsafe, as defined in this section, he shall give the owner, agent or person in control of such building or structure written notice, stating the defects found to exist. The notice shall require the owner within a reasonable time as determined by the marshal to either complete specified repairs or improvements, or to demolish and remove the building or structure, or unsafe portion thereof. If necessary, such notice shall also require the building, structure or portion thereof to be vacated forthwith and not reoccupied until the specified repairs and improvements are completed, inspected and approved by the State Fire Marshal.

 (2) The marshal shall cause to be posted at each entrance to such building a notice as follows: “THIS BUILDING IS UNSAFE AND ITS USE OR OCCUPANCY HAS BEEN PROHIBITED BY THE STATE FIRE MARSHAL.” Such notice shall remain posted until the required repairs are made or demolition is completed. It shall be unlawful for any person, firm or corporation, or its agents, to remove such notice without written permission of the State Fire Marshal, or for any person to enter the building except for the purpose of making the required repairs or demolishing such building.

 (3) The owner, agent or person in control of any building subject to repair may appeal any decision of the Fire Marshal to an administrative law judge, as provided under Article 5 of Chapter 23 of Title 1. Emergency decisions of the fire marshal are not stayed pending appeal.

 (4) If the owner, agent or person in control of a property cannot be found within the stated time limit or, if such owner, agent or person in control shall after notice fail, neglect or refuse to comply with notice to repair, rehabilitate, demolish or remove the building or structure or portion thereof, the State Fire Marshal shall cause such building, structure or portion thereof to be vacated and secured.

HISTORY: 1962 Code Section 37‑82.11; 1972 (57) 2598; 1990 Act No. 535, Section 2; 1993 Act No. 181, Section 350.

CROSS REFERENCES

Repair, closing or demolition of dwellings unfit for human habitation in counties, see Sections 31‑15‑310 et seq.

Repair, closing or demolition of dwellings unfit for human habitation in municipalities of over one thousand, see Sections 31‑15‑10 et seq.

Library References

Health 393.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 51 to 56, 58 to 62.

Attorney General’s Opinions

Adoption of an ordinance to abate unsafe buildings at the local level would extend and enhance the protection of public health and safety by complementing the abatement procedures currently available through the State Fire Marshal’s Office. 1989 Op. Atty Gen, No. 89‑99, p 269.

**SECTION 23‑9‑155.** Installation of smoke detectors in apartments houses having no fire protection system; limitations on liability; promulgation of regulations.

 Every dwelling unit within an apartment house having no fire protection system must be provided with an approved listed smoke detector, installed in accordance with the manufacturer’s recommendation and listing. The smoke detector must be mounted on the ceiling or wall at a point centrally located in the corridor or area giving access to each group of rooms used for sleeping purposes. Where the dwelling unit contains more than one story, detectors are required on each story including cellars and basements, but not including uninhabitable attics. In dwelling units with split levels, a smoke detector must be installed only on the upper level, if the lower level is less than one full story below the upper level, except that if there is a door between levels then a detector is required on each level. Detectors must be connected to a sounding device or other detector to provide an alarm which must be audible in the sleeping areas. Smoke detectors must be listed and meet the installation requirements of National Fire Protection Association Standard 72A and National Fire Protection Association Standard 74.

 If the smoke detector malfunctions, and the malfunctioning is caused by the tenant’s intentional or negligent act, the landlord is not liable for damage caused by the malfunctioning of the device if the fire causing the damage is not the result of the landlord’s intentional or negligent act.

 If the smoke detector malfunctions, and the malfunctioning is caused by the negligent production of the device, the landlord is not liable for damage caused by the malfunctioning if the landlord had no knowledge of the defective condition and exercised reasonable care in the acquisition and installation of the device, and if the fire causing the damage is not the result of the landlord’s intentional or negligent act.

 The Division of the State Fire Marshal shall promulgate regulations to carry out the provisions of this section.

 Notwithstanding any other provision of law, this section shall take effect one year after approval by the Governor.

HISTORY: Former Section 23‑45‑160 [1986 Act No. 430, Section 40; 1988 Act No. 658, Part II, Section 25B] redesignated Section 23‑9‑155 by 1990 Act No. 528, Section 16; 1993 Act No. 181, Section 351.

Library References

Health 393.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 51 to 56, 58 to 62.

**SECTION 23‑9‑157.** Notice of violation.

 The State Fire Marshal or any of his authorized agents, when inspecting buildings or structures for compliance with applicable provisions of law or fire codes and finding violations of the same, must inform the owner of the building or structure in writing of the nature of the violation and a specific citation as to the particular statutory provision of law or provision of the applicable fire code on which the violation is based before any changes in the building or structure may be required or before any penalties authorized by law may be assessed.

HISTORY: 1990 Act No. 535, Section 4.

**SECTION 23‑9‑160.** Emergency powers and duties of State Fire Marshal concerning unsafe buildings; lien for costs incurred.

 The decision of the State Fire Marshal concerning unsafe structures is final in cases of emergency which, in his opinion, involve imminent danger to human life or health. He shall promptly cause the building, structure, or portion of it to be made safe or demolished. For this purpose he may immediately enter the structure or the land on which it stands, or abutting land or structures, with such assistance and at such cost as he may consider necessary. He may vacate adjacent structures and protect the public by appropriate fences or those other means as may be necessary and for this purpose may close a public or private way. Costs incurred, if not paid by the property owner, agent, or person in control, must be borne by the municipality if the subject property is located in a municipality or the county if the property is located outside municipal limits. Prior to the corrective action by the State Fire Marshal, written notice of it must be given to the county or municipality in which the property is located. Upon payment of the costs, the county or municipality shall acquire a lien on the property involved to recover the costs, which must be recorded in the office of the clerk of court or register of deeds in the county where the property is located, and the lien created is enforceable as a tax lien, junior in priority to any other prior recorded lien or mortgage on the property.

HISTORY: 1962 Code Section 37‑82.12; 1972 (57) 2598; 1985 Act No. 201, Part II, Section 50.

CROSS REFERENCES

Order and appeals from order of State Fire Marshal to remove or remedy a fire hazard, assessments, appeals and execution of order of repair upon noncompliance by owner, injunctive relief, see Section 23‑9‑70.

Library References

Health 393.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 51 to 56, 58 to 62.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Clerks of Court Section 10, Duties.

**SECTION 23‑9‑170.** Interference with State Fire Marshal or his agents; injunctive relief.

 Any person who interferes with the action of the Fire Marshal or his agents in the enforcement of his orders shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not more than one hundred dollars or imprisoned for not more than thirty days.

 The Fire Marshal is further authorized to obtain injunctive relief from an administrative law judge pursuant to Article 5 of Chapter 23 of Title 1 to prevent interference with his orders or the implementation thereof.

HISTORY: 1962 Code Section 37‑82.13; 1972 (57) 2598; 1993 Act No. 181, Section 352.

Library References

Injunction 89.

Obstructing Justice 7.

Westlaw Topic Nos. 212, 282.

C.J.S. Injunctions Sections 242 to 243, 245 to 247, 249 to 250.

C.J.S. Obstructing Justice or Governmental Administration Sections 4, 10, 12 to 29, 31 to 32, 38.

**SECTION 23‑9‑180.** Staying emergency orders of State Fire Marshal.

 The orders of the Fire Marshal in a situation determined by him to be an emergency and dangerous to public safety shall not be stayed by order of an administrative law judge pursuant to Article 5 of Chapter 23 of Title 1 pending a hearing on the merits of an appeal from such an order.

HISTORY: 1962 Code Section 37‑82.14; 1972 (57) 2598; 1993 Act No. 181, Section 353.

Library References

Health 393.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 51 to 56, 58 to 62.

**SECTION 23‑9‑190.** Determining eligibility for income tax deduction by volunteer firefighters, rescue squad members, and Hazardous Materials Response Team members.

 (A) The State Fire Marshal shall establish a performance‑based point system for volunteer firefighters, volunteer rescue squad members, and volunteer members of a Hazardous Materials (HAZMAT) Response Team. Members receiving annually a minimum number of points set by the Fire Marshal are eligible for the deduction allowed pursuant to Section 12‑6‑1140. Points must be awarded for a year as follows:

 (1) participation in approved training, including:

 (a) certified interior firefighter;

 (b) emergency vehicle driver training;

 (c) pump operations;

 (d) incident command systems;

 (e) rural water supply;

 (f) automobile extrication;

 (g) certified instructor training;

 (h) certified inspector training;

 (i) certified public fire education training;

 (j) officer training;

 (k) HAZMAT operations;

 (l) HAZMAT technician;

 (m) HAZMAT specialist.

 (2) possessing a commercial or Class E driver’s license;

 (3) participation in first aid/medical training such as:

 (a) first responder;

 (b) EMT—basic;

 (c) EMT—intermediate;

 (d) paramedic.

 (4) participation in public fire education programs;

 (5) attendance at meetings;

 (6) station staffing; and

 (7) volunteer response.

 (B) The Fire Marshal shall, in consultation with the South Carolina State Firemen’s Association and in the case of volunteer HAZMAT teams, county emergency services directors:

 (1) develop a standardized form and recordkeeping system and provide a master copy of all information and forms to each fire department, rescue squad, and HAZMAT Response Team in the State;

 (2) provide training to the various fire chiefs or rescue squad leaders and county emergency services directors on the use of the forms and the outline of the program;

 (3) advertise the availability of the program.

 (C) The local fire chief/rescue squad leader and county emergency services director shall:

 (1) provide written records to each member by January 31 of the year following the applicable tax year that shows the points obtained by each member for the previous tax year;

 (2) maintain a copy of records for each member for at least seven years;

 (3) certify the report for each member;

 (4) provide to the Department of Revenue by January 31 of the year following the applicable tax year copies of the records forwarded to members pursuant to item (1) of this subsection. Each member’s social security number must be included in the copies forwarded to the department.

HISTORY: 1999 Act No. 100, Part II, Section 23; 2002 Act No. 363, Section 3B.

Library References

Taxation 3500.

Westlaw Topic No. 371.

**SECTION 23‑9‑195.** Community fireworks display license.

 The sponsor of a community fireworks display using consumer fireworks may petition the State Fire Marshal, Department of Labor, Licensing and Regulation for a license to hold the display. The license must be granted if:

 (1) the county in which the event is to be held has a population of less than thirty thousand;

 (2) the governing body of the unincorporated county or the municipality in which the event is to be held approves the display through an ordinance or resolution;

 (3) the sponsor is a volunteer nonremunerated individual, group of individuals, or a community organization;

 (4) the sponsor can document the presence of police and fire rescue at the event;

 (5) the sponsor can provide proof of insurance for the event; and

 (6) the sponsor can demonstrate experience in hosting similar events, using similar nonremunerated volunteers without incident.

 The State Fire Marshal, Department of Labor, Licensing and Regulation, may charge and retain a fee for the petition equal to the cost of the application fee of other similar filings.

HISTORY: 2016 Act No. 218 (S.1252), Section 1, eff June 3, 2016.

ARTICLE 2

State Arson Control Program

**SECTION 23‑9‑210.** Creation of Program; advisory committee; laboratory services.

 There is created the State Arson Control Program (program) under the office of the State Fire Marshal which shall provide administrative and logistical support to the program.

 The State Arson Control Program shall have an advisory committee which must be composed of six members appointed by the Governor for terms of four years each and until their successors are appointed and qualify, except that of those members first appointed, three must be appointed for terms of two years each. One member must be a law enforcement officer, one must be engaged in fire service, one must be a chemist, one must be an insurance agent, one must be a member of the general public representing the consumer, and one must be employed by an insurer licensed to do business in this State. Vacancies on the committee must be filled for the remainder of the unexpired term in the same manner of original appointment.

 This committee shall submit to the Director of the Department of Labor, Licensing & Regulation an annual report which is prepared by the office of the State Fire Marshal concerning the operation and effectiveness of the State Arson Control Program.

 The State Law Enforcement Division shall contract with the office of the State Fire Marshal to provide all necessary laboratory services and analyses for the program.

HISTORY: 1984 Act No. 512, Part II, Section 49B; 1993 Act No. 181, Section 354.

Library References

Criminal Law 1222.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 323, 1724 to 1732.

**SECTION 23‑9‑220.** Duties and responsibilities.

 The State Arson Control Program, which must be implemented on July 1, 1984, has the following duties and responsibilities:

 (1) The investigation of all fires involving state‑owned property.

 (2) Investigations directed by the Governor.

 (3) The investigation of fires where there is a request from a municipal or county official.

HISTORY: 1984 Act No. 512, Part II, Section 49B.

Library References

Criminal Law 1222.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 323, 1724 to 1732.

**SECTION 23‑9‑230.** Powers of investigators and of program.

 Investigators of the State Arson Control Program have the powers of other law enforcement officers of this State, including agents of the State Law Enforcement Division, when performing their duties, including the power of arrest. In addition, all powers vested in the State Fire Marshal’s office are also vested in the State Arson Control Program.

HISTORY: 1984 Act No. 512, Part II, Section 49B.

Library References

Criminal Law 1222.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 323, 1724 to 1732.

ARTICLE 3

Firemen’s Insurance and Inspection Fund

**SECTION 23‑9‑310.** Board of trustees of firemen’s insurance and inspection fund.

 In each city or town which has a regularly organized fire department under the control of the mayor and council or intendant and council of that city or town and in each unincorporated community having a population of two hundred fifty persons within an area of one mile radius in this State which has a regularly organized fire department under the control of a responsible authority or representative group of citizens in the community having in serviceable condition for fire duty fire apparatus and necessary equipment belonging thereto to the value of ten thousand dollars and upwards and having a total personnel of not less than ten men, including paid and volunteer members, deriving benefits from the provisions of this article, there must be appointed a local board of trustees, to be known as the trustees of the firemen’s insurance and inspection fund, to be composed of three or five members.

HISTORY: 1987 Act No. 155, Section 5 (derived from former 1976 Code Section 38‑57‑10 [1947 (45) 322; 1952 Code Section 37‑1151; 1962 Code Section 37‑1151; 1978 Act No. 585, Section 3]).

Attorney General’s Opinions

The provisions in Title 23, Chapter 9, Article 3, which deal with the Fireman’s Insurance and Inspection Fund, violate neither the South Carolina Constitution nor the subordinate laws of the State. S.C. Op.Atty.Gen. (May 5, 2011) 2011 WL 2214073.

**SECTION 23‑9‑320.** Composition of board of trustees in cities and towns; term of office of citizen members.

 The board of trustees of the firemen’s insurance and inspection fund in cities and towns, if composed of three, consists of the mayor, the councilman in charge of the fire department or the chairman of the fire committee, and the chief of the fire department. The board in cities and towns, if composed of five, consists of the chairman of the board of fire masters or the chairman of the fire committee, the chief of the fire department, the city or town treasurer, and two citizens, one to be appointed by the mayor and one to be appointed by the chief of the fire department, both to be confirmed by the governing body of the city or town. The term of office of the last two named members of the board is four years and until their successors are appointed and confirmed and qualify for office.

HISTORY: 1987 Act No. 155, Section 5 (derived from former 1976 Code Sections 38‑57‑20 [1947 (45) 322; 1952 Code Section 37‑1152; 1962 Code Section 37‑1152]).

**SECTION 23‑9‑330.** Composition of board of trustees in unincorporated communities; term of office of citizen members.

 The board of trustees of the firemen’s insurance and inspection fund in unincorporated communities is composed of the treasurer of the county in which the greater part of the community is located and any residents of the community as may be appointed by the treasurer, on a recommendation by a majority of the legislative delegation or delegations of the county or counties in which the community is located. The term of office of the members, other than the county treasurer, is four years, and they shall serve until their successors are appointed and qualify for office.

HISTORY: 1987 Act No. 155, Section 5 (derived from former 1976 Code Section 38‑57‑30 [1947 (45) 322; 1952 Code Section 37‑1153; 1962 Code Section 37‑1153]).

Attorney General’s Opinions

Special purpose districts are not “quasi‑municipal corporations” for determining board of trustees composition, but “unincorporated communities”. S.C. Op.Atty.Gen. (September 9, 2016) 2016 WL 5539649.

**SECTION 23‑9‑340.** Compensation of trustees; election of chairman and secretary; designation of treasurer.

 All members of the board of trustees of each firemen’s insurance and inspection fund shall serve without compensation. The board shall elect from its number a chairman and secretary who shall likewise serve without compensation. The treasurer of the city or town, or, for a fund for an unincorporated community, the county treasurer, shall act as the treasurer of the board and is custodian of all funds received as a result of the provisions of this article.

HISTORY: 1987 Act No. 155, Section 5 (derived from former 1976 Code Section 38‑57‑40 [1947 (45) 322; 1952 Code Section 37‑1154; 1962 Code Section 37‑1154; 1978 Act No. 585, Section 4]).

**SECTION 23‑9‑350.** Enactment of ordinance providing for building and inspection code required.

 No city or town may enjoy any benefits under this article unless it has passed a suitable ordinance approved by the State Fire Marshal providing a building and inspection code for the proper erection and inspection of all buildings in the city or town so as to eliminate, as far as may be possible, the danger of fires arising from defective construction or the presence and existence of inflammable and combustible material and conditions.

HISTORY: 1987 Act No. 155, Section 5 (derived from 1976 Code former Section 38‑57‑50 [1947 (45) 322; 1952 Code Section 37‑1155; 1962 Code Section 1155; 1978 Act No. 585, Section 5]).

CROSS REFERENCES

State Fire Marshal, see Section 23‑9‑10 et seq.

Supervision and inspection by the South Carolina State Firemen’s Association of the operation of the ordinance required to be passed by this section, see Section 23‑9‑370.

**SECTION 23‑9‑360.** Fire inspector, fire inspections, and reports required; penalties for failure to comply.

 Every incorporated city or town and every county in which is located any unincorporated community accepting the benefits of this article shall annually, by February first, designate some person as the fire inspector for the city, town, or county and this person shall quarterly, by the first day of April, July, October, and January, make an inspection of every public building and business establishment located within the city, town, or county. Whenever the fire inspector finds in any building or establishment any combustible material or inflammatory conditions dangerous to the safety of the building or premises, he shall order the material or conditions removed. Quarterly reports must be filed with the State Fire Marshal, and one of these quarterly reports is considered an annual report and shall show in detail any hazardous or inflammable condition in connection with the condition of every public building, business establishment, or residence in the city, town, or county. If the requirements of this section are not complied with, the city, town, or county fire department is considered to have waived its rights for that year to the benefits to be derived under this article, and the treasurer of each county is directed not to distribute any benefits under this article to any city, town, or county fire department which has waived its rights to the benefits.

HISTORY: 1987 Act No. 155, Section 5 (derived from former 1976 Code Section 38‑57‑60 [1947 (45) 322; 1952 Code Section 37‑1156; 1962 Code Section 37‑1156; 1978 Act No. 585, Section 6]).

CROSS REFERENCES

County treasurer’s obligation to distribute the broker’s premium tax collected on property insurance, according to the requirements of this section, see Section 38‑45‑60.

Library References

Health 393.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 51 to 56, 58 to 62.

Attorney General’s Opinions

Where a member of the fire department is also a commissioned law enforcement officer and is a recognized fire code official, and is instructed to perform a regularly scheduled fire inspection, the fact alone that the individual is also a law enforcement officer would not require that the individual obtain a search warrant prior to making the inspection. S.C. Op.Atty.Gen. (May 18, 2010) 2010 WL 2320796.

**SECTION 23‑9‑370.** Membership in South Carolina State Firemen’s Association required; supervision of operation of building and inspection code.

 For the purpose of supervision and inspection and as a guaranty that the provisions of this article are administered as herein set forth, every fire department enjoying the benefits of this article must be a member of the South Carolina State Firemen’s Association. The association may supervise and inspect the operation of the ordinance required in this article to be passed in each of the several towns and cities enjoying the benefits of this article.

HISTORY: 1987 Act No. 155, Section 5 (derived from former 1976 Code Section 38‑57‑70 [1947 (45) 322; 1952 Code Section 37‑1157; 1962 Code Section 37‑1157]).

CROSS REFERENCES

Payment by county treasurers to State Firemen’s Association of portion of the proceeds received from the tax on fire insurance to defray the expense incurred by reason of this section, see Section 23‑9‑430.

Requirement that towns and cities pass an ordinance providing for a building and inspection code, see Section 23‑9‑350.

Attorney General’s Opinions

The provisions in Title 23, Chapter 9, Article 3, which deal with the Fireman’s Insurance and Inspection Fund, violate neither the South Carolina Constitution nor the subordinate laws of the State. S.C. Op.Atty.Gen. (May 5, 2011) 2011 WL 2214073.

**SECTION 23‑9‑380.** Annual certificate of existence of fire department; penalty for failure to file.

 The clerk of any incorporated city or town and the treasurer of the county in which is located the greater part of any unincorporated community accepting the benefits of this article as required herein shall annually, by October thirty‑first, make and file with the State Fire Marshal on a blank to be furnished by the State Fire Marshal his certificate stating the existence of the department, the number of steam, hand, or other engines, hook and ladder trucks, and hose carts in actual use, the number of organized companies, and the system of water supply in use for the department, together with any other facts the State Fire Marshal requires. If the certificate required by this section is not filed with the State Fire Marshal by October thirty‑first in any year, the city, town, or community failing to file the certificate is considered to have waived and relinquished its rights for that year to any benefits distributed under this article by the county treasurer.

HISTORY: 1987 Act No. 155, Section 5 (derived from former 1976 Code Section 38‑57‑80 [1947 (45) 322; 1952 Code Section 37‑1158; 1962 Code Section 37‑1158; 1978 Act No. 585, Section 7]).

**SECTION 23‑9‑390.** Designation of volunteer fire department as regular, organized fire department; annual certification to governing body of local municipality; annual certification to State Fire Marshal.

 Any volunteer fire department having a headquarters station within or without a municipality, which is duly organized and has the officers which normally comprise the membership of a regular, organized fire department, with ten or more active members, is designated a regular, organized fire department.

 The chief of the department shall annually certify to the governing body of the municipality or the county, dependent upon where the headquarters station is located, the names of all officers and active members. The clerk of the governing body shall in turn certify the names of the active members and the officers to the State Fire Marshal.

HISTORY: 1987 Act No. 155, Section 5 (derived from former 1976 Code Section 38‑57‑90 [1962 Code Section 37‑1158.1; 1964 (53) 2057; 1978 Act No. 585, Section 8.

CROSS REFERENCES

Requirement that the benefits of this article payable to volunteer fire departments be transmitted to the governing body of the area in which the volunteer fire department is located, see Section 23‑9‑400.

**SECTION 23‑9‑400.** Benefits to volunteer fire departments to be transmitted to governing body of area.

 Any benefits accruing to an area serviced by a volunteer fire department which qualifies as a regular, organized fire department must be transmitted to the treasurer of the governing body of the area and distributed according to the provisions of this article.

HISTORY: 1987 Act No. 155, Section 5 (derived from former 1976 Code Section 38‑57‑100 [1962 Code Section 37‑1158.2; 1964 (53) 2057; 1978 Act No. 585, Section 9]).

CROSS REFERENCES

Requirements for the designation of a volunteer fire department as a regular, organized fire department, see Section 23‑9‑390.

**SECTION 23‑9‑410.** Distribution of funds collected on insurance premiums; use of funds.

 The State Treasurer shall pay over the amount collected upon the premiums of the insurance business required to be reported under the provisions of Section 38‑7‑70 to the treasurers of the counties to which the premiums are allocated under the provisions of Section 38‑7‑70 in the respective portions resulting from the allocations. All monies so collected must be set apart and equitably used by each of the treasurers solely and entirely for the betterment and maintenance of skilled and efficient fire departments within the county.

HISTORY: 1987 Act No. 155, Section 5 (derived from former 1976 Code Section 38‑57‑160 [1947 (45) 322; 1952 Code Section 37‑1164; 1962 Code Section 37‑1164; 1978 Act No. 585, Section 14]).

CROSS REFERENCES

Further restrictions on the expenditure or withholding of funds from any firemen’s insurance and inspection fund, see Section 23‑9‑470.

Necessity of approval of the State Firemen’s Association for disbursements of funds from any firemen’s insurance and inspection fund, see Section 23‑9‑450.

Provision providing that this section is subject to the provisions of section 61‑424 of the 1962 Code (codified as a local law in the 1976 Code) in cities which have adopted the provisions of Article 4 of Chapter 7 of Title 61 of the 1962 Code (also codified as a local law in the 1976 Code), see Section 23‑9‑440.

Restrictions on the use of funds for certain purposes, see Section 23‑9‑460.

Attorney General’s Opinions

The distribution of insurance taxes to counties and municipalities is determined by the legislature and the legislature’s choice to follow the permanent statutory percentage scheme of appropriation while authorizing the Budget and Control Board to uniformly reduce appropriations to prevent a deficit, authorizes the reduction of the statutory amounts provided for by permanent law. 1969‑70 Op. Atty Gen, No. 3063, p 359.

The charge levied upon foreign fire insurers must be disbursed by the State Treasurer to the county treasurer as provided by Section 23‑9‑410. The county treasurer must distribute the funds so received as directed by this section and Section 23‑9‑430; five (5%) percent to the S. C. State Firemen’s Association. 1979 Op. Atty Gen, No. 79‑79, p 103.

**SECTION 23‑9‑420.** Time‑frame for distribution of funds; determination of amount fire department is to receive; regulations for administration of funds.

 All monies or other benefits received and distributed under the provisions of this article by a city, town, or county treasurer or other financial officer must be distributed to the trustees of the local fire department designated by the county treasurer or other financial officer to receive the benefits within forty‑five days after the receipt of the monies or other benefits in the initial year and within thirty days each year thereafter. Each designated fire department shall receive an amount of the tax computed on the basis of the assessed value of improvements to real estate within the service areas of the fire department, and all monies must be administered by the trustees under the regulations adopted by them.

HISTORY: 1987 Act No. 155, Section 5 (derived from former 1976 Code Section 38‑57‑170 [1947 (45) 322; 1951 (47) 433; 1952 Code Section 37‑1165; 1962 Code Section 37‑1165; 1978 Act No. 585, Section 15]).

CROSS REFERENCES

Provision providing that this section is subject to the provisions of section 61‑424 of the 1962 Code (codified as a local law in the 1976 Code) in cities which have adopted the provisions of Article 4 of Chapter 7 of Title 61 of the 1962 Code (also codified as a local law in the 1976 Code), see Section 23‑9‑440.

Attorney General’s Opinions

The charge levied upon foreign fire insurers must be disbursed by the State Treasurer to the county treasurer as provided by former Section 38‑57‑160 [from which Section 23‑9‑410 was derived]. The county treasurer must distribute the funds so received as directed by former Sections 38‑57‑170 and 38‑57‑180 [from which this section and Section 23‑9‑430 were derived]; five (5%) percent to the S. C. State Firemen’s Association. 1979 Op. Atty Gen, No. 79‑79, p 103.

**SECTION 23‑9‑430.** Payment by county treasurers to State Firemen’s Association of portion of proceeds received from tax on fire insurance; use of funds.

 For the purposes of Section 23‑9‑370 and to defray the expenses thereof, each county treasurer shall pay over to the treasurer of the South Carolina State Firemen’s Association the sum of five percent of the gross proceeds received annually by each county, town, or unincorporated community from the one percent tax on fire insurance allocated to the city, town, or community. The sums so paid must be expended for the sole purpose of the betterment and maintenance of skillful and efficient fire departments within the county.

HISTORY: 1987 Act No. 155, Section 5 (derived from former 1976 Code Section 38‑57‑180 [1947 (45) 322; 1952 Code Section 37‑1166; 1962 Code Section 37‑1166; 1978 Act No. 585, Section 16]).

CROSS REFERENCES

Provision providing that this section is subject to the provisions of section 61‑424 of the 1962 Code (codified as a local law in the 1976 Code) in cities which have adopted the provisions of Article 4 of Chapter 7 of Title 61 of the 1962 Code (also codified as a local law in the 1976 Code), see Section 23‑9‑440.

Attorney General’s Opinions

The provisions in Title 23, Chapter 9, Article 3, which deal with the Fireman’s Insurance and Inspection Fund, violate neither the South Carolina Constitution nor the subordinate laws of the State. S.C. Op.Atty.Gen. (May 5, 2011) 2011 WL 2214073.

The charge levied upon foreign fire insurers must be disbursed by the State Treasurer to the county treasurer as provided by former Section 38‑57‑160 [from which Section 23‑9‑410 was derived]. The county treasurer must distribute the funds so received as directed by former Sections 38‑57‑170 and 38‑57‑180 [from which Section 23‑9‑420 and this section were derived]; five (5%) percent to the S. C. State Firemen’s Association. 1979 Op. Atty Gen, No. 79‑79, p 103.

**SECTION 23‑9‑440.** Special provisions affecting boards of trustees of firemen’s insurance and inspection fund applicable to certain cities.

 In cities which have adopted the provisions of Title 61 of the 1962 Code of Laws of South Carolina, the provisions of Sections 23‑9‑410 to 23‑9‑430 are subject to the provisions of Title 61.

HISTORY: 1987 Act No. 155, Section 5 (derived from former 1976 Code Section 38‑57‑190 [1949 (46) 293; 1952 Code Section 37‑1166.1; 1962 Code Section 37‑1166.1]).

**SECTION 23‑9‑450.** Disbursements of funds from firemen’s insurance and inspection fund; approval.

 Before any disbursements exceeding one hundred dollars of the funds of any firemen’s insurance and inspection fund are made by the treasurers of the counties, they shall first submit to the supervising trustees of the South Carolina State Firemen’s Association a statement of how the funds are to be expended and shall receive from the trustees their written approval of the manner and method by which the funds are to be disbursed, so that the South Carolina Firemen’s Association shall know that the funds are being expended solely for the benefit of the firemen of each particular fire department in the State. If a proposed disbursement is to be expended legally and in accordance with the law, it is mandatory upon the supervising trustees to give their approval. Failure upon the part of any treasurer to comply with the foregoing makes him liable on his official bond.

HISTORY: 1987 Act No. 155, Section 5 (derived from former 1976 Code Section 38‑57‑200 [1947 (45) 322; 1952 Code Section 37‑1167; 1962 Code Section 37‑1167; 1978 Act No. 585, Section 17]).

Attorney General’s Opinions

The provisions in Title 23, Chapter 9, Article 3, which deal with the Fireman’s Insurance and Inspection Fund, violate neither the South Carolina Constitution nor the subordinate laws of the State. S.C. Op.Atty.Gen. (May 5, 2011) 2011 WL 2214073.

**SECTION 23‑9‑460.** Purposes for which funds may be expended; restrictions on use.

 No funds of firemen’s insurance and inspection fund may be divided among the firemen of any fire department in cash. When any fire department by a majority provides for the expenditure of any funds for the collective benefit and enjoyment of the entire department, it is mandatory for the local trustees and the state trustees of the South Carolina State Firemen’s Association to approve the expenditure. None of the funds may be expended in any manner for any purpose for which any city, town, unincorporated community, or county may be legally liable.

HISTORY: 1987 Act No. 155, Section 5 (derived from former 1976 Code Section 38‑57‑210 [1951 (47) 433; 1952 Code Section 37‑1168; 1962 Code Section 37‑1168; 1978 Act No. 585, Section 18]).

**SECTION 23‑9‑470.** Funds to be use for purposes prescribed in; to reduce amounts required to be distributed.

 No funds from the firemen’s insurance and inspection fund may be withheld or used for any purpose except as prescribed in this article, and no agency of the State, including the State Fiscal Accountability Authority, has the authority to reduce the amounts required to be distributed to counties and municipalities under the provisions of this article.

HISTORY: 1987 Act No. 155, Section 5 (derived from former 1976 Code Section 38‑57‑220 [1979 Act No. 190, Section 9]).

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

CROSS REFERENCES

County treasurer’s obligation to distribute the broker’s premium tax collected on property insurance, according to the requirements of this section, see Section 38‑45‑60.

Attorney General’s Opinions

The provisions in Title 23, Chapter 9, Article 3, which deal with the Fireman’s Insurance and Inspection Fund, violate neither the South Carolina Constitution nor the subordinate laws of the State. S.C. Op.Atty.Gen. (May 5, 2011) 2011 WL 2214073.

ARTICLE 5

South Carolina Hydrogen Permitting Act

**SECTION 23‑9‑510.** Short title.

 This article may be cited as the “South Carolina Hydrogen Permitting Act”.

HISTORY: 2010 Act No. 254, Section 1, eff upon approval (became law without the Governor’s signature on June 14, 2010).

CROSS REFERENCES

Fire prevention and safety, construction documents and shop drawings, see S.C. Code of Regulations R. 71‑8300.4.

**SECTION 23‑9‑520.** Establishment of the South Carolina Hydrogen Permitting Program; purposes.

 There is established the South Carolina Hydrogen Permitting Program within the Office of the State Fire Marshal. The purposes of this program are to:

 (1) make hydrogen fuel easily accessible to the general public for retail purchase from multiple, convenient locations throughout the State in a manner similar to that used for dispensing gasoline and other fuels sold to power motor vehicles;

 (2) promote and protect public health, safety, and welfare;

 (3) promote a positive business environment for the hydrogen and fuel cell industry; and

 (4) demonstrate leadership as a progressive alternative energy state by ensuring that hydrogen and fuel cells are permitted on a consistent basis throughout the State and meet minimum standards of quality provided in the International Code Council’s 2006 codes or the latest state‑adopted version.

HISTORY: 2010 Act No. 254, Section 1, eff upon approval (became law without the Governor’s signature on June 14, 2010).

**SECTION 23‑9‑530.** Definitions.

 As used in this article:

 (1) “Container” means all vessels including, but not limited to, tanks, cylinders, or pressure vessels used for storage of hydrogen.

 (2) “Facility” means a fueling station or a fuel cell site that will store or dispense hydrogen for use as a transportation fuel and motor vehicle fuel or in a fuel cell.

 (3) “Fuel cell” means an appliance that uses fuel to produce electricity through an electro‑chemical process. These fuels include, but are not limited to, hydrogen, methanol, or solid oxides.

 (4) “Fueling station” means a facility that dispenses gasoline, hydrogen, or other fuels intended to be used in motor vehicles.

 (5) “Hydrogen facility” or “facility” means a fueling station or a fuel cell site that will store or dispense hydrogen for use as a transportation fuel and motor vehicle fuel or in a fuel cell.

HISTORY: 2010 Act No. 254, Section 1, eff upon approval (became law without the Governor’s signature on June 14, 2010).

**SECTION 23‑9‑540.** Fire marshal to permit hydrogen facilities; delegation of permitting authority; fees.

 Only the State Fire Marshal may:

 (1) permit a hydrogen facility in this State, although he may delegate this permitting authority to a county or municipal official if the:

 (a) county or municipality served by the official has at least three hydrogen fueling stations to be renovated or constructed in its jurisdiction; and

 (b) official completes prescribed training and obtains certification pursuant to Section 23‑9‑550(3).

 (2) impose a fee related to the permitting, licensing, or inspection of a hydrogen fueling station under this article, in addition to the application filing fee provided in Section 23‑9‑560(B)(1). The State Fire Marshal may not delegate this authority to impose a fee.

HISTORY: 2010 Act No. 254, Section 1, eff upon approval (became law without the Governor’s signature on June 14, 2010).

**SECTION 23‑9‑550.** Fire marshal duties.

 (A) The State Fire Marshal shall:

 (1) ensure that the laws of this State governing gaseous and liquefied hydrogen at a hydrogen facility are executed faithfully;

 (2) require conformance with fire prevention and protection standards based on nationally recognized standards prescribed by law or regulation for the prevention of fire and the protection of life and property;

 (3) develop training and certification requirements a county or municipal official must satisfy to grant a permit to a hydrogen facility through a delegation of the State Fire Marshal’s authority under Section 23‑9‑540, subject to the limits in subsection (B) of this section;

 (4) develop minimum requirements for the design, construction, location, installation, and operation of equipment for storing, handling, and dispensing hydrogen at a facility. These requirements must:

 (a) reasonably be necessary to protect the health, welfare, and safety of the public and a person using these materials; and

 (b) substantially conform to the generally accepted standards of safety concerning hydrogen;

 (5) impose at least semi‑annual random inspections of a facility licensed under this article to determine the hydrogen’s value for fueling and the facility’s safety; and

 (6) promulgate regulations necessary to carry out the requirements of this article.

 (B) When a codes and standards organization certified by the American National Standards Institute develops a standard procedure for training and certifying a county or municipal official to permit to a hydrogen facility, the State Fire Marshal may adopt this procedure.

HISTORY: 2010 Act No. 254, Section 1, eff upon approval (became law without the Governor’s signature on June 14, 2010).

**SECTION 23‑9‑560.** Application to renovate or construct a facility to store or dispense hydrogen; contents; filing fees; hearing.

 (A) A party seeking to renovate or construct a facility to store or dispense hydrogen must apply to the State Fire Marshal or his certified designee by registered mail, return receipt requested, for approval before beginning the renovation construction. An application must include:

 (1) a site plan;

 (2) an accidental release plan;

 (3) piping layout with valves and fitting details;

 (4) normal and emergency ventilation designs;

 (5) tank capacity and design standards;

 (6) electrical plan; tank and piping support details;

 (7) information concerning on‑site fire protection equipment;

 (8) information concerning tank location with respect to other tanks and dikes; and

 (9) other information the State Fire Marshal considers relevant for evaluating the application.

 (B) The State Fire Marshal:

 (1) may charge an application filing fee of ten dollars that must be paid before an application may be accepted;

 (2) may conduct a hearing on an application; and

 (3) shall approve or deny an application within sixty calendar days or the application automatically is considered approved.

HISTORY: 2010 Act No. 254, Section 1, eff upon approval (became law without the Governor’s signature on June 14, 2010).

**SECTION 23‑9‑570.** Violation of article; penalties.

 (A) A person who conveys or offers to convey hydrogen in violation of this article may be subject to an administrative fine, stop‑sale order, or both, at the discretion of the State Fire Marshal.

 (B) An administrative fine must not be assessed for an amount greater than one thousand dollars unless the violation:

 (1) threatens public health or safety;

 (2) is committed knowingly and intentionally; or

 (3) reflects a continuing and repetitive pattern of disregard for the requirements of this article.

 (C) An administrative fine may not exceed ten thousand dollars for a violation.

HISTORY: 2010 Act No. 254, Section 1, eff upon approval (became law without the Governor’s signature on June 14, 2010).