



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF FIRE SERVICES
RICHARD W. MILLER
STATE FIRE MARSHAL

MIKE ZIMMER
DIRECTOR

STATE FIRE SAFETY BOARD MEETING MINUTES
Thursday, September 24, 2015

Members Present

Lynn Artman
John Enkemann
David Henry
Greg Herman
Donald Hicks
Amy Hodgson
Mark Jensen
Andrew Lenaghan
Dean Mallos – **Chair**
Richard Miller
Dave Piche
Kassandra Renneberg
Ron Sabin
John Wozniak - Teleconference

Members Absent

David Herbal
Thomas Lippens
Dr. Usamah Mossallam

Guest

Jim Elenbaas, LARA/BFS Region 4 Supervisor -Teleconference

Michigan Department of Licensing and Regulatory Affairs Personnel

Cathy Carson, LARA/BFS, Executive Secretary to the Board
TJ Richardson, LARA/BFS, Fire Fighter Training Coordinator
Hollie Metts, LARA/BFS, Senior Executive Management Assistant

Call To Order and Determination of Quorum

Meeting was called to order at 1:08 p.m. Chair Mallos asked all to stand for the Pledge of Allegiance. Chair Mallos requested a moment of silence for public safety officers and the military. Roll Call by Board Secretary Cathy Carson determined that a quorum was present. Chair Mallos gave emergency exiting procedures. Chair Mallos welcomed everyone. Introductions were made by board members and guests.

Agenda

Chair Mallos requested any additions, deletions or changes to the agenda.

A **MOTION** was made by Board Member Lenaghan to approve the agenda as amended for Thursday, September 24, 2015. **MOTION SUPPORTED** by Board Member Sabin. **MOTION CARRIED.**

Disposition of Minutes

A **MOTION** was made by Board Member Henry to approve the minutes for Thursday, June 18, 2015. **MOTION SUPPORTED** by Board Member Herman. **MOTION CARRIED.**

Bureau of Fire Services Report

Fireworks Citation and Appeal Process Presentation – Jim Elenbaas, LARA-Field Services Region 4 Supervisor.

Jim Elenbaas presented an overview to the State Fire Safety Board (SFSB) on the background of the fireworks citation and appeal process.

- Objectives Overview of the BFS fireworks citation and appeal
- Explain role of SFSB in the appeal process
- Describe the SFSB appeal review process

Fireworks Citations

- Fireworks is the only BFS program where citations are written
- Citations can only be written as civil fines
- Limited sections of PA 256 of 2011 establish civil fines for violations
- Every citation is matched to a report that contains more detailed violation information
- Writing citations has been a new experience for BFS inspectors
-

28.467a Section 17a (1) – Issuance of Citation

- May be issued for
 - Violation of the Act
 - Order issued under the Act
 - Rule promulgated under the Act
- Limit of 90 days from completion of inspection or investigation

MCL 28.454 Section 4(7) – Display of Certificate

- Prominently display the original or copy of the certificate at the retail location
 - \$100 civil fine
 - Each day constitutes a separate violation
 - BFS needs proof of the number of days open to write more than one day

28.455 Section 5(2) – Compliance with NFPA 1124

- A person that knows or should know that they must comply with NFPA 1124 and fails to do so
 - \$2,500 fine per violation of NFPA 1124

- Each day constitutes a separate violation
- One of the more commonly written citations
 - Affidavit of compliance

Note: The NFPA has removed the entirety of 1124 that deals with consumer fireworks, beginning with the 2013 edition and retroactive to the prior edition. The action was taken by the Board of Directors. Act 256 of 2011 in Michigan adopts the 2006 edition NFPA 1124. The 2006 edition still stands and is still in effect in Michigan.

28.455 Section 5(3) – Insurance

- A person that knows or should know that they must have \$10M in public and product liability per the Act and fails to do so
 - \$5,000 civil fine
- Mostly written for illegal sales at locations that did not apply for a consumer fireworks certificate

Significant enforcement issue during 2015
Largest single civil fine BFS can write

28.462 Section 12(1) & (2) – Prohibited Conduct

- Illegal discharge without property owner's approval
 - \$500 civil fine
- Selling to a minor
 - \$500 civil fine
- BFS has never written citations under these sections

28.468a Section 18a – Misc. Violations

- Authorizes civil fines for
 - Violations of the Act
 - Used when a specific civil fine is not authorized for an Act section violation
 - Order issued under the Act
 - Rule promulgated under the Act
 - The Fireworks Safety General Rules 2014
 -

Violations written under this section can be applied to Act sections that do not have a civil fine OR have only misdemeanor fines

Violations of rules are separate from violations of NFPA 1124 – no inventories as required by rule, no evacuation plan, etc.

28.468a Section 18a(1) & (2) – Misc. Violations

- 18a(1) – Serious violation
 - Def. – death or serious impairment of body function
 - \$1,000 civil fine
- 18a(2) – Non-serious (minor) violation

- \$500 civil fine

Illegal Sales Citation

- Most common citation appealed
- Citation written for
 - \$5000 for no insurance – 28.455(3)
 - \$500 (minor) for failing to obtain a certificate – 28.454(1)
 - \$500 (minor) for failing to collect fire safety fees – 28.458(4)
- Product is also confiscated under authority of the Act

28.455(3) has direct civil fine of up to \$5000 in the Act

28.454(1) has only misdemeanor fines so is written under 28.468a(2) as a non-serious violation of the Act

28.458(4) has only misdemeanor fines (starting at \$10,000) so is written under 28.468a(2) as a non-serious violation of the Act

Citation Appeal Process

- Citation Written
- Appeal to State Fire Marshal
- Appeal to State Fire Safety Board
- Appeal to MAHS
- Appeal process is contained within the Fireworks Safety General Rules
- Appeal process is similar to any other state agency appeal process
- Appeal is an administrative process, not a normal criminal appeal process
- Timelines are established in the rules and enforced by BFS
- Most appeals stop after SFSB – doesn't cost them anything to appeal through that stage

State Fire Safety Board Appeal

- Appeal of the State Fire Marshal's review decision
- Must appeal within 28 calendar days of issuance of review decision
- A technical review of the SFM's final review decision based solely on the administrative record
 - No hearing
 - No additional information than was already reviewed
- Appeals to the SFSB are based upon the SFM decision
- Appeal information will be given to the board after BFS verifies appeal is timely
- Review is based upon the administrative record by BFS
 - No hearing
 - No testimony
 - No additional information can be provided by the appellant or BFS
 - Technical review – did BFS properly apply the law or rule in question based upon the documents presented

State Fire Safety Board Appeal

- Decision of the SFSB must include:
 - Material findings of fact
 - Conclusions of law
 - Remedial orders
 - Majority Vote by the SFSB
- Standard form letter has been developed
- Standard form letter developed with assistance from LARA legal experts
- Transmitted via certified letter to the appellant by BFS upon completion

Fireworks Program

SFM Miller provided an update regarding the funds in the Fireworks Program per the statute. The fireworks safety fund is created within the Department of Treasury. In the fund is deposited the certificate fee's for permanent and non-permanent consumer fireworks retail sales facilities and the six percent safety fees that are added to the sales of fireworks. The certificate fees pay the cost of the fireworks inspection delegation program and the six percent safety fees are for firefighter training. As of August 2015, the amount for the sale of the fireworks out of tents (temporary structures) was \$430,200.00, and the amount for the sale of fireworks out of building (permanent structures) was \$224,800.00. The total safety fees collected were \$2,004,258.00. The State of Michigan (SOM) fiscal year ends September 30, 2015. There were a total of 45 fireworks appeals in 2014 and a total of 18 fireworks appeals in 2015.

Bureau Updates

Four employees have left the bureau leaving 4 vacant positions; they have not been approved to back-fill. Aaron Bemister and Julie Sworden left the bureau. Hollie Metts replaced Julie Sworden as Executive Administrative Assistant to the State Fire Marshal and Thomas Richardson, was hired as the Fire Fighter Training Division Regional Coordinator. In the past there were nine FFTD employees who have now been reduced to two FFTD Regional Coordinators, Dan Hammerberg and TJ Richardson. The last vacancy is a student position. There is a federal regulation that allows students to only work approximately 129 hours per month.

SMF Miller attended the funeral service for Dennis Rodeman, and travelled to the Michigan Firemen's Memorial in Roscommon Michigan. He will be attending Code Drafting meetings for International Code Council (ICC) and National Fire Protection Association (NFPA) in the near future.

SMF Miller stated the BFS has no plans to relocate at this time.

Software Updates

Systems Maintenance of Knowledge and Education (SMOKE) program has been implemented and currently in use. Per the governor's initiative, all boards and councils are to work within their statutory authority. The BFS use to enter information for over 700 inspectors in the Information System Management (IMS) program. This process will no longer be performed by the BFS.

Legislative Update

SB - 494: Introduced by Senator Judy Emmons, A bill to amend 1941 PA 207, entitled "Fire prevention code," (MCL 29.1 to 29.33) by adding section 3f., to revise the state fire code to permit the use of lock block devices on school classroom doors, and locks that can lock a classroom from the inside without a key on September 16, 2015, currently sitting in committee.

HB - 4875: Introduced by Representative Yanez, to amend the fireworks safety act, would prohibit the use of sky lanterns as of September 10, 2015, currently sitting in committee.

HB - 4876: Introduced by Sarah Roberts, A bill to amend 1931 PA 328, entitled "The Michigan penal code," by amending section 224 (MCL 750.224), as amended by 2006 PA 401. Sec. 224., to prohibit the use of flame throwers on September 17, 2015, currently sitting in committee.

SB - 4740: Introduced by Laura Cox, a bill to amend 1941 PA 207, entitled "Fire prevention code," by amending section 3e (MCL 29.3e), as amended by 2006 PA 189. Sec. 3e., on June 18, 2015, currently sitting in committee.

SB - 372: Introduced by Sen. Dale W. Zorn (R) on June 4, 2015, to waive a state firefighter certification testing requirement for a person from another state where this certification is based on the same national standards on June 4, 2015, currently sitting in committee.

New Business

Election of Board Officers

Chair Mallos called for the election of Vice Chair.

Nomination was made for John Enkenmann to serve as vice chair of the SFSB.

A **MOTION** was made by Board Member Henry to accept John Enkenmann as the SFSB Vice Chair. **MOTION SUPPORTED** by Board Member Herman. **MOTION CARRIED.**

SFSB Firework Appeals to issue decision October 24, 2014

Citation FW15480 called to order at 2:36 p.m., issued to Richard Hennigar (Robert C. Horvath, Attorney), received 06/30/15 has been upheld, adjourned 2:37 p.m.

Citation FW15230 called to order at 2:38 p.m., issued to Jessica G. Shamoun (Walter B. Connolly Jr.), received 07/3/15 has been upheld, adjourned 2:39 p.m.

Public Comments

An inquiry will be presented to the AG's office regarding fulling your SFSB appointment post retirement from your current employment and the organization they are representing.

SBSB member Herman, questioned the total amount of the fireworks fees collected, given the cost being \$1,000.00 and the total amount collected was \$ \$224,800.00.

Newly appointed SFSB members, Lynn Artmann, Amy Hodgson and Dave Piche gave a brief description on their current positions and the organization they represent.

Skip Hugo who will be representing Insurance Service Organization ISO will be the guest speaker for the next SFSB meeting.

Next Meeting Date

The next meeting will be held **Thursday, October 15, 2015, at 1:00 p.m.**, at 3101 Technology Blvd., Suite H, Lansing, MI.

Adjourn

A **MOTION** was made by Board Member Rennenberg and **MOTION SUPPORTED** by Board Member Sabin to adjourn the meeting at 2:46 p.m. **MOTION CARRIED.**

Approved

Dean Mallos
Chair, State Fire Safety Board

10/9/15
Date

Dean Mallos,
Printed Name of State Fire Safety Board Chair