

ACT 241

H.B. NO. 3049-78

A Bill for an Act Relating to the State Fire Marshal.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Findings and purpose. The Legislature finds that existing State laws and county ordinances have led to different and inconsistent fire protection standards imposed by the State Fire Marshal and the county governments, that existing State laws and county ordinances divide the accountability of the county fire chiefs by subjecting them to the supervision of both the State Fire Marshal and the mayors and county councils, and that the public would be better served if all responsibilities related to the establishment and enforcement of fire protection standards were focused at the county, rather than at the State and county level.

The purpose of this Act is to transfer the functions and responsibilities of the State Fire Marshal to the respective counties, to abolish the Office of the State Fire Marshal, and to place all functions relative to the protection of persons and property against fire loss with the respective county governments.

SECTION 2. Chapter 132, Hawaii Revised Statutes, is amended in the following respects:

(1) By amending section 132-1 to read:

“Sec. 132-1 County fire chiefs; powers and duties. (a) Records. The fire chief of each county shall keep in his office a record of all fires occurring in the

county and of all facts concerning the same, and shall make such compilations and statistical investigations as he may deem proper, all of which shall be kept as permanent records in his office. All records shall be public, except that any evidence in any investigation may, in the discretion of the county fire chief, be withheld from the public.

(b) Investigations, generally. The fire chief of each county shall:

- (1) Investigate the cause, origin, and circumstances of fires;
- (2) Supervise and make or cause to be made periodically a thorough inspection of all property which might constitute a fire hazard within the county;
- (3) Summon and compel the attendance of witnesses and production of evidence and hold hearings and make orders in any matter under his jurisdiction;
- (4) Cooperate with any and all other governmental officers or agencies having jurisdiction in the matters."

(2) By amending section 132-2 to read:

"Sec. 132-2 General power to make rules. Subject to chapter 91, the fire chief of each county may adopt rules which shall not be inconsistent with the provisions of any ordinance relating to the protection of persons and property against fire. Such rules may relate to:

- (1) Prevention of fires, and the inspection of property, periodically or otherwise, or for the prevention of or reduction of loss by fire, or to promote the safety of persons in case of fire;
- (2) Manufacture, storage, sale, and use of combustibles and explosives;
- (3) Installation and maintenance of automatic, or other fire alarm systems, and fire extinguishing equipment;
- (4) Fire escape and other means of exits from or access to buildings or parts of buildings or other property in case of fire, including the exterior approaches to exits of places of assembly."

(3) By amending section 132-3 to read:

"Sec. 132-3 Adoption of State model fire code. The State fire council shall, after public hearings pursuant to chapter 91, adopt prior to July 1, 1979, a State model fire code setting forth minimum requirements relative to the protection of persons and property from fire loss including without limitation: (1) the storage, handling and use of hazardous substances, materials and devices; and (2) the control of conditions hazardous to life or property in the design, use or occupancy of buildings and premises. The State model fire code, insofar as is practicable, shall complement, augment and be consistent in form and language with the building and other codes of the respective counties. Upon adoption by the State fire council, the State model fire code shall be transmitted to the respective county councils which may, by ordinance, either enact its provisions or enact more stringent provisions relating to protection of persons and property against fire loss; provided that the county councils may enact less stringent provisions with the prior written approval of the State fire council. The State fire council shall meet annually to review and amend the State model fire code."

(4) By repealing Section 132-4.

(5) By renumbering and amending Section 132-5 to read:

"Sec. 132-4 Investigation of fires; criminal prosecutions. The fire chief of the county in which any fire occurs shall immediately investigate the cause, origin, and circumstances of fire by which property has been destroyed or damaged and so far as possible determine whether the fire was the result of carelessness or design.

If after any investigation the county fire chief is of the opinion that the evidence in relation to the fire indicates that a crime has been committed, he shall present the evidence to the prosecuting officer of the county in which the supposed offense was committed, with the request that he institute such criminal proceedings as the evidence may warrant."

(6) By renumbering and amending Section 132-6 to read:

"Sec. 132-5 Right of entry for inspection; unlawful to obstruct. The county fire chief may at all reasonable hours enter any buildings, structures, or premises within his jurisdiction, except the interior of private dwellings, to make any inspection, investigation, or examination which is authorized to be made under this chapter. The county fire chief may enter any private dwelling whenever he has reason to believe that dangerous conditions creating a fire hazard exist in the dwelling. The county fire chief or any member of any fire department may enter any private dwelling when a fire has occurred in the dwelling. It shall be unlawful to obstruct, hinder, or delay any person having the right to make the inspection, investigation, or examination in the performance of duty.

The county fire chief shall make an annual inspection of all State or county buildings and shall make a report to the authorities responsible for the maintenance of any building when it is found that a building does not meet minimum standards of fire and safety protection."

(7) By renumbering and amending Section 132-7 to read:

"Sec. 132-6 Duties of county fire chiefs; periodic inspections; orders to remove fire hazards; appeals. (a) Each county fire chief shall, in person or by officers or members of his fire department designated by him for that purpose, inspect all buildings, premises, and public thoroughfares, except the interiors of private dwellings, for the purpose of ascertaining and causing to be corrected any conditions liable to cause fire, or any violation of any law, ordinance, rule, or order relating to fire hazard or to the prevention of fires.

(b) The inspection shall be made at least once each year within the jurisdiction of the county fire chief, and not less than once in six months within the fire limits or the congested districts subject to conflagration, as the county council or other proper legislative body shall designate, and oftener as the county fire chief may determine.

(c) A written report of each inspection shall be kept on file in the office of the county fire chief.

(d) A copy of any report showing a change in the hazard or any violation of law, ordinance, rule or order relating to the fire hazard upon any risk, shall be

given by the county fire chief to any rating bureau making written request of him therefor.

(e) Each county fire chief is vested with the power and jurisdiction over, and shall have supervision of, every building and premises in the county as may be necessary to enforce any law, ordinances, rule, and order relating to protection from fire loss; provided that this provision shall not in any manner limit the jurisdiction or authority which any other county official may have over such building or premises under any other law or ordinance. Whenever as a result of inspection or upon complaint or otherwise the county fire chief determines that a law, ordinance, rule or order relating to protection from fire loss has been violated or that a condition exists which creates an unreasonable risk of fire loss, he shall prepare and serve upon the owner, occupant or other person responsible for the building or premises a written order setting forth the nature of the alleged violation or condition, the law, ordinance, rule or order violated, and the protections, safeguards, or other means or methods required to render the building or premises safe as required by law, ordinance, or rule. The order shall be complied with by the owner or occupant or person responsible for the building or premises within the time therein specified unless a timely appeal is taken pursuant to subsection (f) of this section.

(f) Owner's appeal to county fire appeals board. The owner or occupant may, within five days, appeal from any order made by the county fire chief to the county fire appeals board, which shall, within thirty days, and after a hearing pursuant to chapter 91, review the order and file its decision thereon, modifying, affirming, or revoking the order. Each county shall by ordinance establish a county fire appeals board and shall provide for its composition.

(g) Notwithstanding the provisions of subsection (e) of this section where the county fire chief determines that a clear and immediate risk of fire loss exists, he may after notice to the owner or occupant or other person responsible for the building or premises, and after a hearing pursuant to chapter 91, order such person to take all actions reasonably necessary to render the building or premises safe from fire loss; provided that no notice or hearing shall be required where the county fire chief determines that the risk of fire loss is sufficiently immediate that delay would be dangerous to the public safety and welfare. If any owner, occupant or other person responsible for the building or premises fails to comply with the order of the county fire chief, the county fire chief may take such action and make such expenditure as may be necessary and if the owner, occupant, or other person responsible neglects or refuses to pay to the county fire chief the expense incurred by him, the county shall have a prior lien on the real property as provided for in section 132-7."

(8) By renumbering and amending section 132-8 to read:

"Sec. 132-7 Duty of owner to remove fire hazard; expense; lien. If the owner or occupant, to whom the order is directed, fails to comply with the order, or with the order as modified on appeal, and within the time therein fixed, then the county fire chief may cause the buildings, structures, or premises to be repaired, torn down, demolished, materials removed, and all dangerous conditions remedied, as the case may be, at the expense of the owner or occupant,

and, if the owner or occupant within thirty days thereafter fails, neglects, or refuses to pay the county fire chief the expense incurred thereby by him, the county shall have a prior lien for the expense on the real estate on which the buildings or structures were located, or on the premises involved, by the filing of a notice of lien in the bureau of conveyances or with the assistant registrar of the land court, if the real estate or premises involved is registered in the land court."

(9) By renumbering and amending section 132-9 to read:

"Sec. 132-8 Duties of owners generally. (a) Every owner or other person having charge of or control over any building, structure, or other premises, in this chapter designated "owner," shall construct, keep, and make the building, structure, or other premises, in this chapter designated "building," reasonably safe from loss of life or injury to persons or property by fire, in this chapter designated "fire loss," in view of the type of construction, the use of the building, and all other pertinent circumstances.

(b) No owner shall permit the occupancy or use of any building which is not reasonably safe from fire loss and no owner shall fail to furnish, provide, and use reasonably adequate protection and safeguards against fire, or fail to adopt and use processes and methods reasonably adequate to render the building safe from fire loss; and no owner or other person shall fail or neglect to do every other thing reasonably necessary to prevent a fire loss in any building under his charge or control."

(10) By renumbering and amending section 132-9.5 to read:

"Sec. 132-8.5 Automatic elevators. (a) Every owner, as defined in section 132-8, of a building in a county with more than five floors above or below ground, in which there is an elevator having automatic operation, shall provide that one or more elevators in such building shall be arranged for use by firemen as follows:

- (1) A key-operated switch with light jewel shall be provided adjacent to the elevator at the street floor landing and may be provided at other landings subject to the discretion of the county fire chief. The key-operated switch shall remove the elevator from normal service and place it on firemen's service.
- (2) The key-operated switch shall, when operated, cancel existing car calls, prevent registration of further car calls, prevent the opening of the elevator doors except at the landing at which the switch is located, and cause the car to travel to that landing bypassing other landing calls. The light jewel shall be illuminated when the car is returning to the firemen's landing in response to the operation of the key-operated switch.
- (3) When the car arrives at the firemen's landing, the doors shall open and remain open until closed by the operation of the elevator from the car.
- (4) A key-operated switch shall be provided in the car which can be operated only by the key which operates the firemen's landing switch and which, when operated, shall permit operation of the elevator only from the car-operating buttons and cause the elevator to bypass landing calls.

(b) In any case where a contract for the installation of an elevator in a building with more than five floors above or below ground, has been entered on

or after July 1, 1974, the elevator shall meet all requirements of the American National Standard Safety Code for Elevators, A17.1-1971, and supplements A17.1a-1972 and A17.1b-1973, as amended from time to time.

(c) The installation, operation, and maintenance of the safety feature prescribed in subsection (a) shall comply with Appendix E of the American National Standard Safety Code for Elevators A17.1-1971, as amended from time to time, and with rules promulgated in conformity with chapter 91 by each county fire chief.

(d) Each county fire chief shall, after consultation with the director of labor and industrial relations as administrator of the Hawaii Occupational Safety and Health Law under chapter 396, promulgate rules in conformity with chapter 91 necessary for the purposes of this section as it applies to all elevators contracted for, before July 1, 1974.

(e) Any person who violates this section shall be subject to the penalties provided in section 132-13."

(11) By renumbering and amending section 132-10 to read:

"Sec. 132-9 Submission of building plans for approval. Before work commences upon the construction of any building of the types hereinafter enumerated, or upon an alteration or addition to any building, the plans and specifications for the work shall be submitted to the county fire chief. Neither the person causing the construction, alteration, or addition to be made, nor his architect or agent, shall authorize, order, or permit the work thereon to start and no contractor, builder, or other person may start the work, before approval of the plans and specifications by the county fire chief.

The foregoing provisions shall be applicable to buildings, the whole or any part of which are being, or intended to be, used as:

- (1) Hospitals, sanitariums, asylums, children's nurseries, and other such institutions;
- (2) Hotels, apartment houses, rooming houses, and tenement houses; provided that, when any such building to be constructed or upon which alterations or additions are to be made, is only one story high, with living accommodations permanently designated and intended for less than twenty-five persons, this section shall not apply;
- (3) Schools, churches, auditoriums, halls, gymnasiums, dance halls, night clubs, factories, office buildings, stores, and all other such buildings where persons work, congregate, or assemble; provided that, when any such building to be constructed, or upon which alterations or additions are to be made, is only one story high, and is permanently designated and intended for a total accommodation at any one time of less than one hundred persons, this section shall not apply.

This section shall be applicable to the State and the counties, and other municipal subdivisions, and their officers, as well as to private persons."

(12) By repealing section 132-11.

(13) By renumbering and amending section 132-12 to read:

"Sec. 132-10 Witnesses; fees. The county fire appeals board or the county fire chief shall in all proceedings have the same powers respecting administering

oaths, compelling the attendance of witnesses and the production of documentary evidence, and examining witnesses as are possessed by circuit courts. In case of disobedience by any person of any order of the county fire appeals board or the county fire chief or of any subpoena issued by either of them or of the refusal of any witness to testify to any matter regarding which he may be questioned lawfully, any circuit judge, on application by the county corporation counsel, shall compel obedience as in case of disobedience of all requirements of a subpoena issued from a circuit court or a refusal to testify therein. The fees and traveling expenses of witnesses shall be the same as are allowed witnesses in the circuit courts and shall be paid by the appropriate county out of any appropriation or funds available for the expenses of the county fire chief."

(14) By renumbering and amending section 132-13 to read:

"Sec. 132-11 Recorded order of county fire chiefs as evidence. A duplicate original of every order made by each county fire chief shall be filed in his office and such duplicate original shall be admissible as evidence in any prosecution for the violation of any of its provisions. Unless an appeal has been instituted and is pending, the provisions of any order shall be presumed to be reasonable and lawful and to fix a reasonable and proper standard and requirement of safety from fire loss."

(15) By renumbering and amending section 132-14 to read:

"Sec. 132-12 Court aid; notices; rehearings; appeals; record. Each county fire chief may invoke the aid of any court of competent jurisdiction to enforce any order or action made or taken by him in pursuance of law.

(16) By renumbering and amending section 132-15 to read:

"Sec. 132-13 Penalty. Any owner, occupant, or other persons having control over or charge of any building, structure, or other premises who violates any provision of this chapter or any law, ordinance, or rule relating to protection from fire loss or who fails or refuses to comply with any order of the county fire chief shall be fined not more than \$500 or imprisoned not more than thirty days, or both."

(17) By renumbering and amending section 132-16 to read:

"Sec. 132-14 Educational powers of county fire chiefs. The fire chiefs of each county may:

- (1) Appoint advisers, promote and secure the appointment and service of committees of commercial, industrial, labor, civic, and other organizations, who shall, without compensation, assist the county fire chief in establishing standards of safety;
- (2) Establish and maintain museums and exhibits of safety and fire prevention in which shall be exhibited equipment, safeguards, and other means and methods for protection against fire loss, and publish and distribute bulletins on any phase of this general subject;
- (3) Cause lectures to be delivered, illustrated by stereopticon or other views, diagrams, or pictures, for the information of owners or other persons and the general public, in regard to the causes and prevention of fires and related subjects."

(18) By renumbering and amending section 132-17 to read:

"Sec. 132-15 Powers of director of labor and industrial relations. Nothing contained in this chapter shall be construed to deprive the director of labor and industrial relations of any power or jurisdiction over or relative to the storage of explosives."

(19) By adding a new section to be appropriately designated and to read as follows:

"Sec. 132- State fire council; composition; functions. There is established a State fire council the members of which shall be ex officio the fire chiefs of the counties and the chief of the fire prevention bureau of the city and county of Honolulu. The State fire council shall appoint an advisory committee to assist it in carrying out its functions under this chapter. The advisory committee shall include the heads of the various county building departments, a licensed architect recommended by the Hawaii Society of the American Institute of Architects, a licensed electrical engineer and a licensed mechanical engineer recommended by the Consulting Engineers Council of Hawaii, a representative of the Hawaii Rating Bureau, a representative of the Hawaii firefighters association, and such other members of the public as the State fire council may determine can best assist it. The State fire council shall elect a chairman from among its members. In addition to adopting a State model fire code pursuant to section 132-3, the State fire council shall serve as a focal point through which all applications to the federal government for federal grant assistance for fire related projects shall be made. The State fire council may advise and assist the county fire departments where appropriate, may prescribe standard procedures and forms relating to inspections, investigations and reporting of fires, may approve plans for cooperation among the county fire departments, and may advise the governor and the legislature with respect to fire prevention and protection, life safety, and any other functions or activities for which the various county fire departments are generally responsible."

(20) By amending the chapter title to read:

"CHAPTER 132 FIRE PROTECTION"

SECTION 3. Chapter 133, Hawaii Revised Statutes, is repealed.

SECTION 4. **Transfer of the State fire marshal program to the various counties.** The functions and activities of the State fire marshal are hereby transferred to the respective counties and the position and office of the State fire marshal are hereby abolished. Upon the effective date of this Act within its jurisdiction each county shall assume all of the powers, duties and obligations of the State fire marshal, whether such powers, duties or obligations are contained in or granted by any law, contract or other document. All references in any such law, contract or document to the State fire marshal shall apply to the respective county as if the latter were specifically named in such law, contract or document in place of the State fire marshal.

SECTION 5. Transfer of records. Upon the effective date of this Act, the State fire marshal shall transfer to the respective counties all records, files, contracts, papers, documents, books, and maps, and similar categorized material, theretofore, made, used, acquired or held by the State fire marshal.

SECTION 6. Transfer of personnel. All State officers and employees whose functions are transferred by this Act or whose office or position is abolished, shall not be separated from public employment, but shall remain in the employment of the State or of one of the respective counties and shall be assigned to any office or position for which such officer or employee is eligible under the personnel laws of the State or of the respective counties.

No employee of the State having tenure shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave or other employee benefit or privilege as a consequence of this Act; provided that subsequent changes in status may be made pursuant to chapters 76 and 77.

SECTION 7. Rules and regulations of the State fire marshal; applicable until superseded by ordinance. Those rules and regulations promulgated by the State fire marshal which set forth standards for the protection of persons or property from fire and which are in full force and effect immediately prior to the effective date of this Act shall thereafter continue in full force and effect within each of the counties, until such time as the county council adopts the State fire code pursuant to section 132-3. Such rules and regulations shall thereupon be superseded.

SECTION 8. Except as set forth in Section 3, statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 9. This Act shall take effect on July 1, 1979; provided that paragraphs (3) and (19) of Section 2 of this Act shall take effect upon approval.

(Approved June 17, 1978.)

*Edited accordingly.