

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

SENATE BILL NO. 419

By: Leftwich

AS INTRODUCED

An Act relating to the State Fire Marshal Commission; amending 74 O.S. 1991, Sections 324.4, 324.5 and 324.9, which relate to the State Fire Marshal; establishing additional duties; creating Investigation Division and Fire Prevention and Code Enforcement Division; abolishing Arson Division and Fire Protection and Prevention Division; deleting physical examination reference; deleting qualification references; appointing Division Chiefs; establishing positions and salaries; authorizing appointments by State Fire Marshal Commission; providing employment and promotion requirements; providing for incentive pay; providing requirements for incentive pay; providing contingency on incentive pay; allowing other remuneration; modifying investigations; providing gender neutral language; providing enforcement of certain laws; amending 74 O.S. 1991, Section 840.8, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 5, Chapter 412, O.S.L. 1998 (74 O.S. Supp. 1998, Section 840-5.5), which relates to unclassified service; creating unclassified positions; providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 74 O.S. 1991, Section 324.4, is amended to read as follows:

Section 324.4 A. The State Fire Marshal Commission shall appoint a full-time State Fire Marshal. ~~He~~ The State Fire Marshal shall administer and enforce the provisions of law pertaining to his or her office under the supervision of the Commission and in accordance with its policies. The State Fire Marshal shall be retired upon reaching sixty-five (65) years of age. The State Fire Marshal shall be a person of good moral character, a resident taxpayer of Oklahoma, and shall not have attained fifty-five (55) years of age at the time of his or her original appointment. The

State Fire Marshal must have had a minimum of ten (10) years' experience in some phase of fire protection, fire prevention, or fire investigation, which may include experience with any state, municipal, military, or industrial fire protection agencies. ~~He~~ The State Fire Marshal shall possess administrative ability and experience and be able to obtain facts in connection with the duties of his or her office by field investigations and to accurately report his or her findings. The Commission may also require additional qualifications.

B. The State Fire Marshal shall have the additional following powers, duties, and responsibilities:

1. To appoint or dismiss an Assistant Fire Marshal who shall have the same qualifications as the Director;

2. To appoint or dismiss a Division Chief of each division who shall have the same qualifications as the State Fire Marshal Agent III or IV;

3. To designate positions, appoint employees and fix salaries of the Bureau, other than salaries fixed by law.

SECTION 2. AMENDATORY 74 O.S. 1991, Section 324.5, is amended to read as follows:

Section 324.5 There is hereby created in the Office of the State Fire Marshal an ~~Arsen Division and a Fire Protection and Prevention Division~~ Investigation Division and a Fire Prevention and Code Enforcement Division. A Division Chief shall be appointed to direct the operations of each divisions, subject to the supervision and control of the State Fire Marshal. An Assistant Fire Marshal shall be appointed to direct the operations of ~~said~~ the Divisions, subject to the supervision and control of the State Fire Marshal at all times. ~~The Assistant Fire Marshal, deputies and agents at the time of their original employment shall undergo and pass a physical examination by a duly authorized physician.~~ The Fire Marshal and, the Assistant Fire Marshal and the Division Chiefs shall not be

subject to the provisions of the Merit System of Personnel Administration. ~~The Assistant Fire Marshal and the agents in the Arson Division must have had at least five (5) years' experience in fire investigation, which may include service in state, municipal, military or industrial fire protection and investigation agencies, and shall have attended at least one of the several specialized training schools on arson detection and investigation, such as those courses offered at a recognized college or university, or other schools. The Assistant Fire Marshal and the agents in the Fire Protection and Prevention Division must have had at least five (5) years' experience in fire protection and prevention, which may include service in state, municipal, military or industrial fire protection and prevention agencies. Proof of successful matriculation and completion from a recognized college or university in fire protection or prevention may be substituted for experience on a year-for-year basis.~~ The State Fire Marshal Commission shall have the authority to appoint such other employees as shall be necessary in discharging the duties of their office.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 324.5a of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Effective July 1, 1999, the annual salaries for the Assistant Fire Marshal, and the positions within the State Fire Marshal Commission, as set out in this section, shall be in accordance and conformity with the following salary schedule, exclusive of longevity pay as authorized by Section 840-2.18 of Title 74 of the Oklahoma Statutes:

1. Assistant State Fire Marshal: Ninety-five percent (95%) of the salary of the State Fire Marshal;
2. Division Chief: Eighty-five percent (85%) of the salary of the State Fire Marshal;

3. Agent Supervisor (Major): Eighty percent (80%) of the salary of the State Fire Marshal;
4. State Fire Marshal Agent I (Probationary) and Statistical Analyst I: \$29,415.00
5. State Fire Marshal Agent II and Statistical Analyst II: \$32,442.00
6. State Fire Marshal Agent III, Senior Agent and Public Education Specialist: \$34,064.00
7. State Fire Marshal Agent IV and Master Agent: \$38,011.00

B. Individuals appointed as State Fire Marshal Agent I (Probationary) shall serve a probation period for a maximum of eighteen (18) months and shall meet the following qualifications:

1. Shall undergo and pass a physical examination by a duly authorized physician to certify their ability to perform the rigorous physical requirements of the position to which they are appointed;
2. Shall undergo a comprehensive background investigation and psychological examination to determine their ability to perform as peace officers;
3. Shall meet the minimum training, education, and experience requirements as determined by the State Fire Marshal Commission; and
4. As a condition of probation and requirement for promotion to State Fire Marshal Agent II, the employee must, in addition to the satisfactory performance of all required duties, pass the Council on Law Enforcement Education and Training (CLEET) requirements for Basic Peace Officer. Employees who fail to meet this requirement will be terminated from employment not later than the end of their eighteenth month of employment.

C. Each employee who holds a position of State Fire Marshal Agent III, shall meet all of the requirements of Agent I and Agent II in addition to serving a minimum of five (5) years with the State Fire Marshal Commission, and possessing an Associate Degree in Fire

Science, Police Science, or a related field from an accredited institution, and shall be a court-qualified expert witness in fire investigation or inspection, and shall possess an Intermediate Peace Officer Certificate issued by the Council on Law Enforcement Education and Training (CLEET).

D. Each employee who holds a position of State Fire Marshal Agent IV, shall meet all of the requirements of Agent I and Agent II in addition to serving a minimum of seven (7) years with the State Fire Marshal Commission, and shall possess a Bachelor's Degree in Fire Protection, Criminal Justice, Public Administration, or a related field from an accredited institution, and shall possess an Advanced Peace Officer Certificate issued by the Council on Law Enforcement Education and Training (CLEET).

E. Promotion to the position of State Fire Marshal Agent III and IV shall be based on a competitive examination as determined by the State Fire Marshal Commission and subject to the availability of funds within the budget of the State Fire Marshal Commission.

F. Each employee who holds a position of State Fire Marshal Agent II, III, and IV, as listed in paragraphs 5 through 7 of subsection A of this section may receive an annual incentive increase of Five Hundred Dollars (\$500.00), not to exceed a total of Two Thousand Five Hundred Dollars (\$2,500.00) within each job class as established by the Office of Personnel Management, effective January 1 of each year, if during the past twelve (12) months the employee:

1. Has achieved an overall annual work performance evaluation which meets standards;
2. Has satisfactorily completed all training as assigned;
3. Has achieved or maintained an Advanced Law Enforcement Certification through CLEET as provided in Section 3311 of Title 70 of the Oklahoma Statutes; and

4. Has not been the subject of formal disciplinary action. For purposes of this paragraph, formal disciplinary action shall be defined pursuant to the Merit System of Personnel Administration Rules.

G. The annual increases provided for in this section shall be subject to the availability of funds within the budget of the State Fire Marshal Commission and shall be in addition to any salary increase, bonus, increase in benefits, or other remuneration which is provided to employees of the state in their class by the Legislature or by rules of the Office of Personnel Management.

H. Employees holding positions listed for base salary increases in subsection A of this section shall also receive any salary increase, bonus, increase in benefits, or other remuneration which is provided to employees of the state in their class by the Legislature or by the rules of the Office of Personnel Management.

SECTION 4. AMENDATORY 74 O.S. 1991, Section 324.9, is amended to read as follows:

Section 324.9 The State Fire Marshal or his or her deputies may make investigations ~~of arson to determine the origin and cause of fires, explosions, or suspected arson, and if he shall be of the opinion that there is evidence sufficient to charge any person with the crime of arson, or with the attempt to commit the crime of arson, or of conspiracy to defraud, or any criminal conduct in connection with such fire, he~~ violations of other related laws and codes. The State Fire Marshal and his or her arson investigators shall be peace officers and have and exercise all the powers and authority of other peace officers, relative to the investigation of arson with primary responsibility for the enforcement of statutes relating to the State Fire Marshal. This shall include the authority to enforce, issue citations, and make arrests for felony and misdemeanor offenses relevant to the duties of the State Fire Marshal. All reports and all results of investigations ~~relating to~~

~~arson or suspected arson~~ relevant to the State Fire Marshal statutes shall be available and shall be freely interchanged between the Office of the State Fire Marshal and the Oklahoma State Bureau of Investigation.

SECTION 5. AMENDATORY 74 O.S. 1991, Section 840.8, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 5, Chapter 412, O.S.L. 1998 (74 O.S. Supp. 1998, Section 840-5.5), is amended to read as follows:

Section 840-5.5 A. The following offices, positions, and personnel shall be in the unclassified service and shall not be placed under the classified service:

1. Persons chosen by popular vote or appointment to fill an elective office, and their employees, except the employees of the Corporation Commission, the State Department of Education and the Department of Labor;

2. Members of boards and commissions, and heads of agencies; also one principal assistant or deputy and one executive secretary for each state agency;

3. All judges, elected or appointed, and their employees;

4. Persons employed with one-time, limited duration, federal or other grant funding that is not continuing or indefinitely renewable. The length of the unclassified employment shall not exceed the period of time for which that specific federal funding is provided. Provided any person unclassified pursuant to this paragraph on April 11, 1995, in a capacity that does not meet the criteria listed in this paragraph may continue to be employed in such status until July 1, 1995;

5. All officers and employees of The Oklahoma State System of Higher Education, State Board of Education and State Department of Vocational and Technical Education;

6. Persons employed in a professional or scientific capacity to make or conduct a temporary and special inquiry, investigation, or

examination on behalf of the Legislature or a committee thereof or by authority of the Governor. These appointments and authorizations shall terminate on the first day of the regular legislative session immediately following the appointment, if not terminated earlier. However, nothing in this paragraph shall prevent the reauthorization and reappointment of any such person;

7. Election officials and employees;

8. Temporary employees employed to work less than one thousand (1,000) hours in any twelve-month period and seasonal employees employed pursuant to Section 1806.1 of this title who work less than one thousand two hundred (1,200) hours in any twelve-month period. This category of employees may include persons employed on an intermittent, provisional, seasonal, temporary or emergency basis;

9. Temporary lake patrol officers, regardless of the number of hours worked, who are employed by the Department of Public Safety during the period March 16 through October 31 in any calendar year; provided, the hours worked shall be considered in determining the temporary employee's eligibility for subsequent employment in any other unclassified temporary employment category;

10. Professional trainees only during the prescribed length of their course of training or extension study;

11. Students who are employed on a part-time basis, which shall be seventy-five percent (75%) of a normal forty-hour work week or thirty (30) hours per week, or less, or on a full-time basis if the employment is pursuant to a cooperative education program such as that provided for under Title I IV-D of the Higher Education Act of 1965 (20 U.S.C. 1087a-1087c), as amended, and who are regularly enrolled in:

- a. an institution of higher learning within The Oklahoma State System of Higher Education,
- b. an institution of higher learning qualified to become coordinated with said State System of Higher

Education. For purposes of this act a student shall be considered a regularly enrolled student if he or she is enrolled in a minimum of five (5) hours of accredited graduate courses or a minimum of ten (10) hours of accredited undergraduate courses, provided, however, the student shall only be required to be enrolled in a minimum of six (6) hours of accredited undergraduate courses during the summer, and such student is regularly attending classes during that semester of employment, or

- c. high school students regularly enrolled in a high school in Oklahoma and regularly attending classes during such time of enrollment;

12. The spouses of personnel who are employed on a part-time basis to assist or work as a relief for their spouses in the Oklahoma Tourism and Recreation Department;

13. Service substitute attendants who are needed to replace museum and site attendants who are unavoidably absent. Service substitutes may work as part-time or full-time relief for absentees for a period of not more than four (4) weeks per year in the Oklahoma Historical Society sites and museums; such substitutes will not count towards the agency's Full-Time-Equivalent Employee Limit;

14. Employees of either the House of Representatives or the State Senate or the Legislative Service Bureau;

15. Corporation Commission personnel occupying the following offices and positions:

- a. Administrative aides, and executive secretaries to the Commissioners,
- b. Directors of all the divisions, personnel managers and comptrollers,
- c. General Counsel,
- d. Public Utility Division Chief Engineer,

- e. Public Utility Division Chief Accountant,
- f. Public Utility Division Chief Economist,
- g. Public Utility Division Deputy Director,
- h. Secretary of the Commission,
- i. Deputy Conservation Director,
- j. Manager of Pollution Abatement,
- k. Manager of Field Operations,
- l. Manager of Technical Services,
- m. Public Utility Division Chief of Telecommunications,
and
- n. Director of Information Services;

16. At the option of the employing agency, the Supervisor, Director, or Educational Coordinator in any other state agency having a primary responsibility to coordinate educational programs operated for children in state institutions;

17. Bill Willis Community Mental Health Center personnel occupying the following offices and positions:

- a. Director of Facility,
- b. Deputy Director for Administration,
- c. Clinical Services Director,
- d. Executive Secretary to Director, and
- e. Directors or Heads of Departments or Services;

18. Office of State Finance personnel occupying the following offices and positions:

- a. State Comptroller,
- b. Information Services Divisions Manager,
- c. Network Manager, and
- d. Network Technician;

19. Employees of the Oklahoma Development Finance Authority;

20. Those positions so specified in the annual business plan of the Department of Commerce;

21. Those positions so specified in the annual business plan of the Oklahoma Center for the Advancement of Science and Technology;

22. The following positions and employees of the Oklahoma School of Science and Mathematics:

- a. positions for which the annual salary is Twenty-four Thousand One Hundred Ninety-three Dollars (\$24,193.00) or more, as determined by the Office of Personnel Management, provided no position shall become unclassified because of any change in salary or grade while it is occupied by a classified employee,
- b. positions requiring certification by the State Department of Education, and
- c. positions and employees authorized to be in the unclassified service of the state elsewhere in this section or in subsection B of this section;

23. Office of Personnel Management employees occupying the following positions:

- a. the Carl Albert Internship Program Coordinator, and
- b. one Administrative Assistant;

24. Department of Labor personnel occupying the following offices and positions:

- a. two Deputy Commissioners,
- b. Executive Secretary to the Commissioner,
- c. Chief of Staff, and
- d. two Administrative Assistants;

25. The State Bond Advisor and his employees;

26. The Oklahoma Employment Security Commission employees occupying the following positions:

- a. Associate Director,
- b. Secretary to the Associate Director, and
- c. Assistant to the Executive Director;

27. Oklahoma Human Rights Commission personnel occupying the position of Administrative Assistant;

28. The officers and employees of the State Banking Department;

29. Officers and employees of the University Hospitals Authority except personnel in the state classified service pursuant to Section 3211 of Title 63 of the Oklahoma Statutes and members of the University Hospitals Authority Model Personnel System created pursuant to subsection E of Section 3211 of Title 63 of the Oklahoma Statutes or as otherwise provided for in Section 3213.2 of Title 63 of the Oklahoma Statutes;

30. Alcoholic Beverage Laws Enforcement Commission employees occupying the three Administrative Service Assistant positions;

31. The Oklahoma State Bureau of Investigation employee occupying the Special Investigator position and one executive secretary in addition to the one authorized pursuant to paragraph 2 of this subsection;

32. The Governor's Representative of the Oklahoma Highway Safety Office of the Oklahoma Department of Public Safety who shall be appointed by the Governor;

33. Oklahoma Department of Transportation employee occupying the position of the Director of the Oklahoma Aeronautics Commission;

34. Commissioners of the Land Office employees occupying the following positions:

- a. Director of the Investments Division,
- b. Assistant Director of the Investments Division, and
- c. one Administrative Assistant;

35. Within the Bureau of Narcotics and Dangerous Drugs Control Commission, the following positions:

- a. two Narcotics Agent positions, provided, authorization for such positions shall be terminated when federal support for the positions by the Gang Intelligence/Enforcement Program is discontinued, and

- b. one executive secretary in addition to the one authorized pursuant to paragraph 2 of this subsection;

36. A maximum of one hundred (100) positions, within full-time-employee limitations of the Oklahoma Military Department, to work in any of the Department of Defense directed youth programs or the State of Oklahoma Juvenile Justice Youth Programs. The authorization for such positions shall be terminated if the federal funding for the positions is discontinued;

37. Within the Oklahoma Commission on Children and Youth the following unclassified positions:

- a. one Oversight Specialist and one Community Development Planner,
- b. one State Plan Grant Coordinator, provided authorization for the position shall be terminated when federal support for the position by the United States Department of Education Early Intervention Program is discontinued, and
- c. one executive secretary in addition to the one authorized pursuant to paragraph 2 of this subsection;

38. The following positions and employees of the Department of Central Services:

- a. one Executive Secretary in addition to the Executive Secretary authorized by paragraph 2 of this subsection,
- b. the Director of Central Purchasing, and
- c. one Alternate Fuels Administrator;

39. One Environmental Specialist I within the Water Resources Board;

40. J.D. McCarty Center for Children with Developmental Disabilities personnel occupying the following offices and positions:

- a. Physical Therapists,

- b. Physical Therapist Assistants,
- c. Occupational Therapists,
- d. Certified Occupational Therapist Aides, and
- e. Speech Pathologists;

41. The Development Officer within the Oklahoma Historical Society;

42. State Department of Agriculture personnel occupying the following positions:

- a. one Executive Secretary in addition to the Executive Secretary authorized by paragraph 2 of this subsection,
- b. Agricultural Marketing Coordinator III, and
- c. temporary fire suppression personnel, regardless of the number of hours worked, who are employed by the State Department of Agriculture during the period of October 1 through May 31 in any fiscal year; provided, however, notwithstanding the provisions of any other section of law, the hours worked by such employees shall not entitle such employees to any benefits received by full-time employees;

43. The Contracts Administrator within the Oklahoma State Employees Benefits Council; ~~and~~

44. All positions and personnel of the Criminal Justice Resource Center within the Department of Public Safety; and

45. An Assistant Fire Marshal and Division Chiefs of the State Fire Marshal Commission.

B. If an agency has the authority to employ personnel in the following offices and positions, the appointing authority shall have the discretion to appoint personnel to the unclassified service:

- 1. Licensed medical doctors, osteopathic physicians, dentists, and psychologists;
- 2. Certified public accountants;

3. Licensed attorneys; and

4. Licensed veterinarians.

C. Effective July 1, 1996, authorization for unclassified offices, positions, or personnel contained in a bill or joint resolution shall terminate June 30 of the ensuing fiscal year after the authorization unless the authorization is codified in the Oklahoma Statutes or the termination is otherwise provided in the legislation.

SECTION 6. This act shall become effective July 1, 1999.

SECTION 7. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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