

**February 18, 2010**

To: Public Safety Committee

From: Kevin Kowalski, Fire Marshal, Town of Simsbury

Re: HB 5156

Thank you for allowing me the opportunity to submit written testimony. My name is Kevin Kowalski, Fire Marshal for the Town of Simsbury. I also represent the CT Fire Marshal's Association on legislative matters. I have been in the fire service for over 35 years and a Fire Marshal for the last 25. We strongly oppose House Bill 5156: AAC The Dismissal of Local Fire Marshals. I would be the first one to say that if it is proven that, after due process, the Fire Marshal, Deputy, or inspector who fails to faithfully perform his/her duties, should be terminated.

Many years ago this body developed a set of procedures that would allow the Fire Marshal the ability to do his/her job without fear of retribution. The Fire Marshal's job is a very difficult one when it comes to inspections. They must complete these inspections both fairly and equitably to ensure a fire safe community. That may be difficult if the Fire Marshal's employment is made "at will". The political interference could become fierce and the by- product could be devastating, possibly even life threatening.

The current procedure for dismissal of a Fire Marshal in Connecticut has become a model to which other states look. The process is clear and concise. Upon receipt of a written complaint from any person alleging that a local fire marshal, deputy fire marshal or fire inspector has performed the duties of his office in an incompetent or negligent manner, the State Fire Marshal shall investigate such complaint and if he determines that probable cause exists, shall hold a hearing on the complaint. This creates a fair and balanced format for review of the Fire Marshals actions.

Below is an excerpt from an OLR report from January 2009, which is already in place. It is followed by the statute regarding dismissal.

**TERMINATION OF FIRE MARSHAL**

The law provides that the fire marshal "shall be sworn to the faithful performance of his duties" and "continue to serve in that office until removed for cause" (CGS § 29-297). The appointing authority must remove any fire marshal who fails to (1) maintain the required certification or (2) "faithfully perform the duties of his office" (CGS §§ 29-298 & 29-299).

The law prohibits dismissal of fire marshals unless certain due process conditions are met. The fire marshal must get (1) written notice of the specific grounds for dismissal and (2) an opportunity to be heard in his or he own defense, personally or by counsel, at a public hearing before the pertinent authority. The hearing must be held between five and 10 days after the notice (CGS § 29-300).

The fire marshal has 30 days after the dismissal to appeal to the Superior Court. The court must review the hearing record and if it appears that testimony is necessary for an equitable disposition, it may take

evidence or appoint a referee or committee to do so. The court may affirm the action of the authority. Or it may set it aside if it finds that the authority acted illegally or arbitrarily, abused its discretion, or acted with bad faith or malice (CGS § 29-300).

Upon receipt of a written complaint from any person alleging that a local fire marshal, deputy fire marshal or fire inspector has performed the duties of his office in an incompetent or negligent manner, the State Fire Marshal shall investigate such complaint and if he determines that probable cause exists, shall hold a hearing on the complaint. The State Fire Marshal shall provide such local fire official with written notice of the date, time and place of a public hearing on the complaint to be held before the State Fire Marshal or the deputy fire marshal not less than ten nor more than twenty days after such notice, the specific grounds for revocation of such local fire official's certificate and a copy of the written complaint or complaints concerning him. Such local fire official shall have the opportunity to be heard in his own defense, personally or by counsel, at such public hearing. Following such hearing, the State Fire Marshal shall make a finding as to whether or not the certificate of such local fire official should be revoked. If the State Fire Marshal finds that such local official's certificate should be revoked, he shall revoke the certification and immediately notify the appointing authority of the municipality in which the local fire official serves that such certification has been revoked. Any local fire official whose certification is revoked may appeal in accordance with the provisions of section 4-183.

History: P.A. 87-59 required state fire marshal to investigate complaints and hold hearings thereon if he determines probable cause exists, and made several technical amendments to section; P.A. 88-317 repealed provision requiring that an appeal by a local fire official whose certification is revoked be made within 30 days following such revocation, effective July 1, 1989, and applicable to all agency proceedings commencing on or after that date.

**Sec. 29-299. (Formerly Sec. 29-46). Dismissal of local fire marshal.** If a local fire marshal fails to faithfully perform the duties of his office, the appointing authority of the municipality in which he is serving shall, after proper inquiry, dismiss him and appoint another in his place. The State Fire Marshal shall be promptly notified of the removal from office of any local fire marshal and of the appointment of his successor.

I thank you again for this opportunity to provide this information so that you will assist us in helping to keep the state safe from fire