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To the Honorable Representative Scott Louser, Chairman of the House Industry, Business and Labor Committee, and Committee members,

I appear before you today to testify in a neutral standpoint for Senate Bill 2211. The Office of the Attorney General supports the important mission of the State Fire Marshal Division and the division's proper alignment within state government as determined by the Legislative Assembly.

To give the committee some background, the State Fire Marshal Division is responsible for public education; fire prevention and safety inspections; reviews of new construction plans for fuel tanks, fire protection systems, and related items; and fire investigations. These tasks are related to community risk reduction, addressing State liability related to safety hazards of fire, and minimizing impacts from fire losses.

The State Fire Marshal Division consists of eight full-time employees and one part-time temporary administrative assistant. Our five Deputy Fire Marshal positions are spread throughout the State to cover large geographic regions from offices out of Bismarck, Dickinson, Minot, Grand Forks and Fargo.

Senate Bill 2211 introduces the realignment of the State Fire Marshal Division with the Insurance Department and would return to where the Division was originally created and operated out of. The fire service and the insurance industry have a long and intertwined history in the United States. The first fire companies in the United States were often funded by insurance coverage on losses. The relationship still exists today, as the higher rated fire service that is provided within a community by their fire department, greatly affects the insurance premiums that are paid by the public. We are one of three states who are annexed with their Attorney General's Office. Many are with their Insurance Department's or have standalone offices.

The State Fire Marshals Division already conducts multiple programs in collaboration with the Insurance Department such as; fire department certificate of existence, fire insurance tax premium distribution, property insurance loss reporting, fire prevention and safety inspections for buildings covered under the fire and tornado insurance fund and reporting of insurance fraud discovered through fire investigations.

I would like to point out that fire origin and cause investigation is not and should not be confused with arson investigation. Fire investigation is a primary duty of fire departments to reduce fires, while arson is a crime that is investigated and prosecuted by law enforcement. All fires in North Dakota are required to be investigated, not only for a criminal element, but to ensure that the State Fire Marshal and local fire authorities are preventing every fire possible. The first and most critical step in fire prevention is fire investigation. Approximately, only 10% of all fires in

North Dakota are reported to be incendiary, or have a criminal aspect. While the State Fire Marshals Division cares greatly that the 10% are investigated and prosecuted, we also need to know what is causing the other 90% of our fires, and ensuring that we are addressing all fire causes, which can affect fire losses and insurance rates within the State. I have had many great fire investigation instructors in my career, and one that sticks with me would always say that the “best arson prosecutions are when the fire service and law enforcement work together to provide an expert fire origin and cause opinion from the fire side, and expert criminal investigation on the law enforcement side.” This is further reflected in the proposed changes in Section 18-01-09 where the Bureau of Criminal Investigation is being added in to ensure the teamwork concept is in place in any suspected situation of arson.

Our current collaboration efforts would remain the same as outlined in the bill with the Bureau of Criminal Investigation, and the State Fire Marshal shall report all suspected cases of arson to the Bureau of Criminal Investigation. This relationship between the State Fire Marshal Division and the Bureau of Criminal Investigation is strong and supported by internal directives to ensure that the two divisions continue to work together to ensure that fire crimes are properly investigated and prosecuted. The proposed language better defines the relationship than currently written.

The State Fire Marshals Division works outside of our silo on a regular basis with other agencies and divisions that have a shared responsibility or area of concern. Other partner agencies and divisions that the division works with include but are not limited to: Department of Health and Human Services (DHHS) Food and Lodging Division, DHHS Life Safety and Construction, DHHS Children and Family Services, the Department of Environmental Quality (DEQ) Petroleum Release Remediation Fund Program, DEQ Division of Municipal Facilities, the Department of Emergency Services, the Department of Forestry Fire Management Division, and the North Dakota Firefighters Association. Working with other agencies and divisions outside of our own is a strength of the State Fire Marshals Division.

The State Fire Marshal Division does have a role in the fire insurance tax distribution to fire departments. North Dakota Century Code 18-04 currently requires the State Fire Marshal to collect and manage the fire department certificate of existence data. Among the items required to be collected from fire departments is financial information each year and includes; the amount of fire insurance tax distributed to the fire department, the amount spent, amount left over, plans for spending the rest of the distribution, and what the distribution was spent on. This information is required to be reported to the interim budget committee every two years. I have testified to this the last two interims, and submit as part of my written testimony the financial information of each fire department as submitted to us by fire departments.

To give the committee an idea of the responses of what distribution funds are spent on, the following are some of the more common reported items: vehicle repairs, replacement of personal protective equipment, replacement of firefighting equipment, replacement of fire hoses, radio upgrades related to the SIRN project, fire station utility bills, new fire trucks and apparatus, purchase of used fire trucks and apparatus, firefighter training, fire station maintenance, new fire station loan payments, new and replacement self-contained breathing apparatus, fire apparatus fuel, insurance fees, remodel of old fire hall, thermal imaging cameras, four-gas air monitors, and SCBA fill-stations.

The State Fire Marshal and the North Dakota Firefighters Association (NDFA) have a long and strong relationship of working together as well. This is highlighted by combining efforts to help address fire prevention training available to fire departments, and working together at fire school

in Minot every year. The proposed change to sub-section 8 under 18-03-01.1 would require the NDFA to “report quarterly to the state fire marshal”. The Insurance Department, NDFA and the State Fire Marshal have talked through this and all parties are comfortable with the proposed language and changes.

All other proposed changes under Senate Bill 2211 that affect the State Fire Marshal are simply changing Attorney General to Insurance Commissioner and have no ill effects to the operations of the State Fire Marshal Division.

The State Fire Marshal Division’s workload has greatly increased in the areas of plan review of new construction and impactful inspections that help local fire departments. Renewed focus on ensuring that fire safety risks are identified, addressed and remedied, is a close relationship with the Insurance Department’s focus on lowering risk to insureds and insurance providers within the State.

The proposed realignment of the State Fire Marshals Division under the Insurance Department is one that makes sense for all parties involved and allows the Division to continue to work with all partners in fire prevention.

I would like to thank you for the time to address the committee today.

Respectfully,

Douglas Nelson  
ND State Fire Marshal