

# **Re-Dedication of the Fire Marshal Tax**

## **Final Report Hotel & Resort Fire Safety Inspection Task Force**

This report is a summary of the work of the Hotel and Resort Fire Safety Inspection Task Force. This group was composed of state agency delegates, local fire officials, private sector businesses and legislators that met during the second half of 2003. The task force was formed as required by legislation passed in 2003 to address the state's recent changes in how it finances inspections of lodging industry businesses.

This report includes an historical perspective of the State Fire Marshal's office and its obligation to inspect lodging businesses as well as the needs and various funding options that we have identified. In addition, we have identified a number of areas of concern that should be addressed in the future to further insure the safety of our state.

The recommendations support reversing changes made by the Legislature to alter existing funding mechanisms for the State Fire Marshal's office for this program. Data was not available at the time of the 2003 legislation to show the impact of the adopted fee system. Data now shows the fees adopted only generate 24% of the cost of conducting fire safety inspections in lodging facilities. It was not the intent of this legislation to reduce the fire safety inspection program, however if funding changes are not made, fire safety inspections of lodging facilities will need to cease.

The task force recommendations included in this report represent general consensus among the task force members. There was a great deal of agreement among the task force members – cutting across all segments of the private and public sectors represented – about the problems within the existing system and the general strategies that should be pursued. There was also a shared recognition of the political problems and realities that our solutions will likely face in the legislative arena. As a result, the task force went through a priority-setting process with input from stakeholders to narrow the scope of the strategies that we are presenting. Nonetheless we expect there to be some opposition to our direction.

The task force acknowledged and is very appreciative of the resource people at the State Fire Marshal's Office (SFMO) who shared their expertise with members. The Task Force would not have had as rich an understanding of how important a role the state plays in caring for the safety of our citizens and guests. The task force also appreciates the active participation of the many stakeholder groups that helped identify and analyze various strategies for change. If all interested parties continue to work together on these

issues, the task force believes that Minnesota can accomplish the necessary changes that we are recommending in this report.

## **HISTORY**

### State Fire Marshal's Office

The mission of the State Fire Marshal Division is to protect lives and property by fostering a fire safe environment through investigation, enforcement, regulation, emergency response, data collection and public education.

The State Fire Marshal's Office was created in 1905 under the Minnesota Department of Commerce within the Insurance Division. In 1970, when the Minnesota Department of Public Safety was created, the SFMO was moved into that Department.

In 1977 two significant tragedies happened within the lodging industry. Fires in hotels/motels in the communities of Breckinridge and Cokato claimed 21 lives. In 1978, the legislature mandated that the SFMO be responsible for inspecting all hotels in Minnesota to ensure the safety of their guests.

Pursuant to Minn. Stat. § 299F.46 and Minn. Stat. § 157, the State Fire Marshal must inspect every hotel with six or more guest rooms at least once every three years. A hotel is classified as a Group R-1 residential occupancy where the occupants are primarily transient in nature (less than 30 days). The requirements apply to hotels/motels, lodging houses and bed & breakfasts with six or more guest rooms.

In 2002 the following number of inspections were conducted by the residential inspection team:

- Complete inspections – 858
- Follow-up inspections – 1,544
- Complaint inspections – 69
- Site visit (consultation) – 164
- TOTAL – 2,635

Based on a budget of \$750,000, this equates to roughly \$285 per inspection.

In addition to these lodging industry inspections, the SFMO is responsible for inspecting daycare facilities, schools, foster care, group homes and numerous other special requests from health departments, local fire departments and citizen complaints. All of these areas benefit from a strong residential inspection team, which is now being funded by the lodging industry.

During the 2003 legislative session, the state legislature passed a new inspection fee system giving the State Fire Marshal Division the authority to raise revenue. These fees were created to cover a cut in the SFMO budget of \$750,000 per year (FY04 & 05). The fees that were imposed call for a base inspection fee of \$435 plus \$7 per room for properties with 36 to 100 units and \$8 per room for properties with 100 or more units.

Exempted from the fees were all hotels with fewer than 35 rooms (approximately 49% of the 1,069 hotels in the state) and any resort classified as 1-C for property tax purposes (approximately 86% of the 1,296 resorts).

A special account was also created legislatively so that all of the money raised by these fees will be deposited in the state treasury and credited to a state fire marshal hotel inspection dedicated account in the special revenue fund. All money in the account will then be annually appropriated to the commissioner of public safety for purposes of operating and administering this program.

As was stated, the annual cost of this fire safety inspection program is \$750,000, the amount by which the Fire Marshal's budget was cut for FY04 & 05. The amount of money that will be generated annually by the new fees imposed is \$185,400 from hotels/motels and an inconsequential amount from resorts. This will leave an operating deficit of \$319,000 for FY04 and \$515,000 for FY05. The reason for the difference in the deficit amounts is because of a one-time transfer of \$196,000 from the juvenile assessment account.

State Fire Marshal Tax (Chapter 297I.05 Subd. 6)

In addition to the State Fire Marshal's office being created in 1905, a tax was created in 1913 to fund it. Every insurance company doing business in the state is required to pay to the state treasurer on or before March 1 annually, a tax equal to one-half of one percent of the gross collected from fire premiums or assessments or both. The recent amounts collected by this tax are as follows:

Year	Receipts	Increase/Decrease from previous year	SFMO Budget
2000	\$3.728 million		
2001	\$4.425 million	+ 18.9%	\$3.2 million
2002	\$5.027 million	+ 14%	\$3.28 million
2003	\$6.082 million	+ 22%	\$3.36 million
2004	See below*		\$2.4 million

\* The updated forecast that was presented November 2003 does not separate out the Fire Marshall tax explicitly however the overall fund that it is a part of did see an increase from May of 2003 to November 2003 of 8%.

Originally, this tax was put into a special fund and was to be appropriated for the maintenance of the office of the state fire marshal and all expenses incurred by the office. The legislation said that the state should not be liable in any manner for the salary of the state fire marshal, his chief assistant, deputies, clerks and other employees or for the maintenance of the office of fire marshal or any expenses incurred and the same shall be payable only from the special fund provided for by the tax on insurance premiums. In 1981, the legislature removed all of that language, deleted the special fire marshal fund, changed the name to Fire Insurance Tax and began placing all monies collected from this tax into the general fund.

## Lodging Industry

During the 90's, there was strong growth in the state's tourism industry, helping to ease the pain of reductions in agriculture, mining and manufacturing. Gross sales generated by the Minnesota tourism industry grew 21% from 1996-1999. Accounting for inflation, this represents a real average annual growth rate of 4.3%. Minnesota lodging receipts more than doubled between 1988 and 1998.

Over the past several years, however, the state's lodging industry has seen a dramatic decline in business as a result of a variety of factors. First, the effects of the 9-11 attack on the World Trade Center did more damage to the lodging and travel industry than any other sector. Travel came to a halt and businesses and families alike chose to greatly reduce their lodging needs. Second, the economy, which was failing even before the attack, hit Minnesotans harder than in past recessions. Finally, the resort industry has been decimated by high property taxes. In the past, there were in excess of 3,000 resorts in the state. Right now there are just over 1,000 and the number is dropping fast as businesses sell off to private developers.

While a recovery appears to be in the distant horizon, it will take years to recover the losses that this industry has felt. While the state has also seen a decline in revenue and was faced with a significant budget shortfall during the 2003 session due to the recession, it seems unfair to target the industry that has been hit the hardest to pay fees for inspections because of budget shortfalls.

## State Fire Marshal Division Hotel & Resort Fire Safety Inspection Task Force

The 2003 Legislature also mandated the Commissioner of Public Safety create a funding task force to recommend to the legislature alternate funding and payment options.

On July 7, 2003 Commissioner Richard Stanek solicited representatives from a wide variety of stakeholder groups to serve on the task force. The following is a list of all who were in attendance at the subsequent meetings that were held throughout the rest of 2003:

Doug Anderson, MN Assn. of Innkeepers  
Glen Bergstrand, State Fire Marshal Division Supervisor  
Ruth Buuck, ELCA Region 3 Camping Network  
Tom Day, Hospitality Minnesota, Vice-President of Government Affairs  
Dave Eliason, Green Lake Lutheran Ministries  
Allan Falk, Super 8 Zumbrota, Hotel Assn. President  
Rep. Doug Fuller, District 4A, House of Representatives  
Garry Gamble, Covenant Bible Camps  
Dana Gotz, Department of Public Safety  
Jon Hoyme, Shetek Lutheran Ministries  
Bill Jones, American Camping Assn.

Elaine Keefe, YMCA, Girl Scouts, Capitol Hill Associates  
Kevin Mahle, Brainerd Fire Chief  
Kevin Matzek, MN. House of Representatives  
Bill McCollum, Hospitality Minnesota – Rochester/Morris  
Bob Polland, Courage Camps & ACA  
Jerry Rosendahl, State Fire Marshal  
Chris Ruttger, Hospitality Minnesota/Minnesota Resort & Campground Assn.  
Patrick Sheehan, Chief Inspector – State Fire Marshal Division  
Commissioner Richard Stanek, Department of Public Safety  
Dave Thompson, Congress of Minnesota Resorts, Fisherman’s Village  
Jim Waldvogel, Crowne Plaza Northstar Hotel  
Sam Walseth, YMCA, Girl Scouts, Capitol Hill Associates

This group met five times over the course of five months to develop this report, identify the problems associated with the new changes and come up with a new funding mechanism for the state fire marshal’s lodging inspection program.

## **PROBLEMS THAT HAVE BEEN IDENTIFIED**

As a result of the task force meetings, a number of problems were identified as they relate to the fire marshal fees and the inspection program:

- The fees do not generate enough funds to continue fire safety inspection program.
- The new fees create a financial hardship on lodging facilities with some properties having to pay up to \$7,000 for their inspection at a time when the industry is feeling the negative effects of a poor economy.
- While fees are mandated for lodging property inspections, they are not collected for other inspected lodging establishments such as board and lodging, bed & breakfasts and assisted living facilities.
- There is no clear determination on how to define or compute dormitory beds vs. rooms – some resort dormitory buildings or camps may have only one room but house 40 guests in a single unit.
- Fees should be created to cover costs of follow-up inspections for all establishments requiring a second follow-up inspection such as complaint inspections, day care centers, nightclubs, etc to act as an incentive to comply.
- A fee inspection structure requires the bigger facilities to be inspected first in order to create a revenue stream for the department
- A fee inspection structure could create the “need” to ticket more follow-up inspections in order to generate additional funds to meet budget.
- SFMO staff levels are well below what is necessary to conduct statewide inspections every three years.

## OPTIONS

However, the real need, and the ultimate charge of the task force was to recommend to the legislature alternate fees and payment options. What follows are the options that we have identified as viable funding/fee alternatives.

1. Re-dedicate the **entire** Fire Marshal Tax back to the State Fire Marshal. The original intent of the state's legislators was to create the Fire Marshal's office and a funding mechanism together whereby the entire office was to be financed from a dedicated fund. The language that stood for almost seventy years stated that any expenses incurred by the SFMO to carry out its duties was to be payable only from the special fund provided for by the tax on insurance premiums. We would propose rededicating the monies collected from this tax, and returning all general fund money back to the state.

The Fire Marshal's budget, prior to the cut in 2003, was \$4 million. Rededicating the entire \$6 million that is collected from the fire marshal tax would not only cover the costs of the Department, but would also allow them to greatly improve their services and return them to the staffing level that we feel is necessary to cover the state and all of its properties. A number of suggestions as to the improvements that should be made are covered later in this report.

2. Dedicate any amount from a budgeted **surplus** of the Fire Marshal Tax. As was demonstrated earlier, the projected forecast for revenue generated by the Fire Marshal tax is \$1 million under what was taken in last year. Knowing that insurance premiums have not gone down and the fact that the fund has seen an average of an 18% increase in each of the last three years, we thought that this "found" money could be used to alter the budget cuts. After a detailed presentation from Norman Foster, Executive Budget Officer for the Minnesota Department of Finance, it was made clear that this money is not actually surplus and is counted toward the general fund at the actual amount. We do believe, however, that a way can be found to dedicate either this "paper" surplus OR any new revenue that is collected as a result of the tax fund increasing on an annual basis.
3. Re-dedicate a **portion** of the Fire Marshal Tax. With great understanding of the concern regarding revenue shifts and the concern over legislation with fiscal notes, we would strongly suggest that a portion of the state fire marshal's tax be rededicated to cover the \$750,000 budget cut. Again, the intent of the tax was to fully fund the SFMO. However, legislation could be created to rededicate a portion of the tax to cover any past and future budgetary cuts from the general fund.

4. Create a public/private partnership. Utilizing a dedication of some of the insurance tax, along with some modest fees for service on the industry, develop a plan that would be more equitable for the state and its lodging businesses. While the industry feels that it is greatly unfair to have created such an extremely high fee rate with little notice, while a tax is already being collected to cover the costs, they still feel it is in their best interest to have a strong Fire Marshal's office. Therefore, some direct suggestions for this partnership would include:
  - Fees based on an average of the number of inspections done. With nearly 2,700 inspections being done a year, the average cost would be \$285 when you factor in the program's budget of \$750,000.
  - Eliminate the free re-inspection fee and charge for it. This will help to improve compliance within the industry and create more revenue options for the state. Of the 2,635 inspections conducted in 2002, 1,544 (59%) were follow-up inspections. There should also be escalating fees for businesses requiring multiple re-inspections.
  - Create a fee for any types of mandated or requested inspections. For instance the state court system requires a fire inspection for court placed children but the office is not reimbursed for these. Also, despite the fact that the state does not mandate fire inspections of most bed and breakfasts, many local health departments do as a condition of getting a permit to operate. These "free" inspections cost money and the SFMO should be able to recoup their costs.
  - Incorporate annual fees instead of triennial fees. This would allow the burden of the inspection to be spread out over a longer time period and would make it easier for these companies to budget for.
5. Increase the fire premium insurance tax by 1/10 of 1 percent and dedicate the increased amount to this program. The current tax rate of .05% of the \$1.2 billion in premiums collected brings in \$6 million to the general fund. If the rate were increase to .06%, the amount brought in would increase by \$1.2 million. Enough to cover the budget deficit created by recent cuts to the SFMO as well as give the Office some additional funds to add the number of inspectors needed to meet the inspection frequency covered by law.

## **FUTURE**

Even though it is outside the purview of the committee, we feel there are a number of other issues that need to be addressed in the future for the State Fire Marshal's Office. First and foremost, is the concern that a wide variety of establishments are going uninspected due to a lack of funding or staffing at the SFMO. Currently the SFMO receives requests to inspect 3 to 4 times as many facilities as they actually have the ability to inspect at their current levels. Examples include bed and breakfasts, assisted living, group homes, juvenile correction group homes, court required placement of children in

homes, youth camps, local fire department requests, mobile home parks, day activity centers, etc.

While the SFMO had some authority to inspect these locations for area health departments or merely at the request of the business owner, lack of funding and staffing now prevents the SFMO from carrying out their obligatory duties in these areas. With a growing number of businesses in these areas, we feel that something will need to be done to address the problem *before* a disaster occurs.

We also feel that an overall assessment of all of the SFMO programs be reviewed to look for any other potential gaps and to make sure that all is being done to preserve the safety of our state. These areas of concern were brought to our attention during a very light review of the SFMO programs.

Also finding a way to streamline these programs so that they are more efficient, are similar in scope and that all money being generated for the SFMO through any fees, such as the Sprinkler Program, stays with this division to ensure that they can continue to offer exemplary service to the state.

These areas, in addition to oversight of funding and any of the new funding mechanisms that are approved, should be monitored by a special oversight committee to be formed by the legislature and appointed by the Governor. With additional oversight and working more closely with interested parties that all recognize the benefit of fire safety in the state, the SFMO could be even stronger. This oversight committee should be made up of legislators, constituency groups representing those being inspected, local fire chiefs and other interested parties.

## **CONCLUSION**

Ultimately, the task force members feels that the \$750,000 that was stripped from this program should be reinvested by the state and in fact that the SFMO budget be fully restored to the level it was at in the late 1990's. However, this being said, we do recognize the tremendous budget constraints that the state is currently facing and respectfully submit several other options that could be considered as a last resort. Looking ahead to the 2004 legislative session, the committee stands ready to answer any questions and testify if necessary as to the specifics of this report and how we came to many of the decisions that were reached.

Respectfully Submitted,

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