



# State of South Carolina

## Office of the Governor

NIKKI R. HALEY  
GOVERNOR

1205 PENDLETON STREET  
COLUMBIA 29201

June 17, 2013

Lt. Governor Glenn F. McConnell  
South Carolina State Senate  
Statehouse, Second Floor  
Columbia, South Carolina 29201

Dear Members of the Senate,

I am vetoing and returning without my signature R88, S.707, a bill that grants authority to the City of Columbia to commission members of its fire department to become certified law enforcement officers to investigate arson and perform fire chief duties. While we greatly appreciate the dedication of our firefighters in protecting our communities, **I must veto S. 707 because of several public policy concerns and unintended consequences, which are shared by the South Carolina Law Enforcement Training Council (Council) and Criminal Justice Academy (Academy), and because it clearly violates the local and special law prohibitions in our State Constitution.**

First, this bill carves out a special exception in current law to allow a single municipality to give its firefighters and fire chiefs the authority to have "full powers of South Carolina-certified law enforcement officers." Under current state law, only law enforcement officers may receive certification and training from the Criminal Justice Academy to enforce criminal laws in the State. This bill presents several problems for the Academy and the Council including: (1) the Academy's certification programs provide very little training for arson investigations because that is a specialty in the law enforcement field; (2) increased costs for training are borne by the Academy and the State, not the municipality; (3) both fire chiefs and law enforcement officers are "officers" for constitutional dual-office holding purposes - thereby prohibiting service in both positions; and finally (4) jurisdictional conflicts could arise because arson currently is investigated by SLED and other law enforcement agencies, not fire departments.

Second, this bill is unconstitutional special, local legislation. Under Article III, Section 34 of the South Carolina Constitution, the General Assembly may not pass special, local legislation in place of a generally applicable law. This bill only applies to the City of Columbia which is given

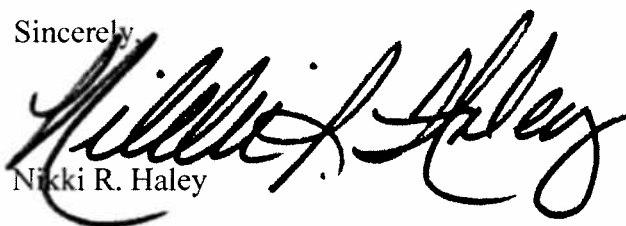
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the authority to bypass general state law regarding who may be certified law enforcement officers. Therefore, this bill clearly violates our State Constitution.

Next year I would consider supporting a statewide bill that clarifies the duties of a Class III certified law enforcement officer and uniformly provides for an appropriate avenue for fire services personnel to seek certified law enforcement status in appropriate circumstances. I would welcome the opportunity to work with the General Assembly as well as representatives from the Law Enforcement Training Council, the Criminal Justice Academy, the State Fire Marshal, and the Fire Academy.

For these reasons, I respectfully request that you sustain my veto of R88, S.707.

Sincerely,

A handwritten signature in black ink, appearing to read "Nikki R. Haley". The signature is fluid and cursive, with a large, stylized initial "N".

Nikki R. Haley



# South Carolina Criminal Justice Academy

June 17, 2013

**(Via U.S. Mail and Fax at (803) 734-5167)**

Governor Nikki Haley  
Office of the Governor  
1205 Pendleton Street  
Columbia, SC 29201

Re: S.707

Dear Governor Haley,

On June 11, 2013, S.707 was ratified (R.88). This bill proposes to:

provide for the authority of the City of Columbia to Appoint and Commission Firefighters to serve as a certified law enforcement officer for certain limited purposes with the full powers of a certified law enforcement officer and to require firefighters to meet certain qualifications to be commission as a certified law enforcement officer.

Specifically, the bill would enact the following statute:

SECTION 1. The City of Columbia is granted authority to appoint and commission members of its fire department as certified law enforcement officers, for the limited purposes of the investigation of any suspected arson within the city limits and for performing the duties of fire chief. As it relates to any qualified arson investigation or fire chief duties, the individual appointed and commissioned shall have the full powers of South Carolina-certified law enforcement officers. The individuals appointed and commissioned by the City of Columbia shall meet the minimum qualifications for South Carolina-certified law enforcement officers as established by law.

The South Carolina Law Enforcement Training Council (hereinafter, "Council") has several concerns with this bill. To give you some context as to how this bill came to be proposed, I must give you some additional information. In late March/early April of this year, the Chief General Counsel of the South Carolina Criminal Justice Academy became aware that the City of Columbia Fire Department had 5 "certified" class 3 law enforcement officers working for them under the auspices of an agreement with the City of Columbia Police Department titled "Appointment of Special Police Officers." (Agreement attached for your review). After searching state statutes, including local statutes, and not being able to identify any statute that gave the City of Columbia Fire Department any law enforcement authority, the Academy sent the City of Columbia Police Department and the Fire Department a letter dated April 8, 2013 advising them that S.C. Code 23-23-10(E)(1) requires a "law enforcement officer" to be "granted

statutory authority to enforce all or some of the criminal, traffic, and penal laws of the State” and have “the power to effect arrests for offenses committed or alleged to have been committed.” (Letter attached for your review). This letter further stated that the Academy had not been able to find any statute granting such authority to the City of Columbia Fire Department and stated that if no such statute exists, the Academy would have to withdraw law enforcement certification from all City of Columbia Fire Department employees.

The Council has five primary concerns with S.707. First, the language of S.707 is significantly broader in terms of the law enforcement authority granted to the firefighters than any other statute granting law enforcement authority to firefighters. Historically, the only law enforcement authority given to fire departments is:

- 1) the authority to direct traffic at the scene of emergencies; and
- 2) the authority to enforce laws so as to prevent interference with the firefighters performing their duties. For example, allowing enforcement of laws preventing the crossing of a fire hose and preventing the following of a fire apparatus.

Because the language of S.707 states that the City of Columbia firefighters will have “full powers of South Carolina-certified law enforcement officers” it appears the City of Columbia firefighters would need full Class 1 Basic Law Enforcement training, which is the same training received by sheriffs’ deputies and other traditional road officers. Class 1 training is currently twelve (12) weeks long and encompasses a number of tasks and classes, including, but not limited to: Legals, Defensive Tactics, Driving (defensive, emergency vehicle operations, and pursuit), Firearms (handgun and rifle), courtroom practicals, police science classes, criminal domestic violence courses, child abuse classes, vulnerable adults classes, juvenile procedures classes, gangs classes, harassment and stalking classes, collision investigation, active aggressive shooter response, DUI detection and standardized field sobriety testing, and Datamaster DMT operation. (Basic Law Enforcement class schedule attached for your review). Please note that very little of Class 1 training focuses on Arson investigation. Arson investigation is a specialty in the law enforcement field and, therefore, is taught in advance training classes. Typically, firefighters, due to the extremely limited law enforcement authority granted to them via statute, only receive Class 3 Limited Duty training, which is much shorter in duration and only has classroom Legals training. (Legals manual attached for your review). Therefore, the language in S.707 contradicts itself and indicates Class 1 training is necessary given the law enforcement authority it grants to City of Columbia firefighters.

Next, the Council has several fiscal concerns with S.707. It costs the Council and, therefore the State of South Carolina, approximately \$6,757.91 per person trained through the Class 1 Basic Law Enforcement training program. If the trainee fails (each trainee is allowed 1 failure and opportunity to retrain), then the cost goes up depending on which section of training was failed. Additionally, during training the trainee is compensated for their time by their employing agency, in this case the City of Columbia. Unfortunately, there is no way to know how many firefighters the City of Columbia would want to have trained and certified. Because there is no limiting language in this statute, the City of Columbia Fire Department could request to have all their firefighters trained and certified, which could severely impact current operations at the Academy. So, it is not possible for the Council to accurately predict this cost, but obviously this cost could get very expensive, very quickly. The City of Columbia Fire Department currently has NO Class 1 law enforcement officers. Further compounding this financial concern is the fact

that the City of Columbia Fire Department does not contribute to the funding of the Academy in any form or fashion and, as is well known at this point, the Academy's revenues have been in a severe decline for some time.

Alternatively, Class 3 Limited Duty training takes 8 ½ days, therefore resulting in a much smaller cost to the Council and less time away from the trainee's employer. Moreover, Class 3 training, while still a cost to the Academy and State, is more closely suited to the needs of a firefighter being cross-trained in law enforcement. Unfortunately, the Council does not know if the City of Columbia would want to train additional firefighters as Class 3 officers, so the Council cannot predict the cost that would be incurred if the bill was amended to ensure only Class 3 training was needed.

In addition to the broadness and fiscal concerns, there is potential for serious dual office holding issues. Many firefighters, particularly fire chiefs, are also deputy fire marshals. Deputy fire marshals are "officials" for purposes of dual office holding. See 1986 WL 289881 (S.C.A.G.) and S.C. Attorney General's Office Opinion dated July 19, 2012 to Brandy A. Duncan, Esquire, (both attached for your review). Law enforcement officers are also "officials" for purposes of dual office holding. *Id.* Therefore, any firefighters that are also deputy fire marshals would, as a function of law, automatically resign their deputy fire marshal office the moment they became law enforcement officers. *Id.*

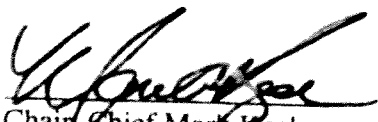
Lastly, the State Fire Marshal and, by extension, the deputy fire marshals appointed by him already have jurisdiction to investigate suspected arsons. See S.C. Code §23-9-40. Therefore, passage of S.707 has the potential to cause serious jurisdictional conflicts, i.e. several agencies would simultaneously have jurisdiction to investigate suspected arsons, including, but not limited to: Local law enforcement (city/municipal police and the Sheriff's Office), State law enforcement (SLED), Local prosecutors (Solicitors), State prosecutors (Attorney General's Office), State Fire Marshal's Office, and, if S.707 passes, the City of Columbia Fire Department.


In addition to the concerns specific to S.707, the Council is concerned that if S.707 is passed, many other fire departments will seek similar local legislation to be passed in future legislative sessions. This would further stress the limited resources at the Academy.

In sum, the Council is opposed the passage of S.707 for the reasons stated above. If you have any questions, concerns, or if you need any additional information from the Council, please contact me at (803) 896-9223, Director Hubert F. Harrell at (803) 896-7779, or Chief General Counsel Brandy A. Duncan at (803) 896-7414.

Sincerely,

South Carolina Law Enforcement Training Council

  
Chair, Chief Mark Keel  
State Law Enforcement Division

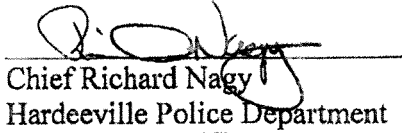
  
Co-Chair Leroy Smith  
S.C. Department of Public Safety



Director Kela Thomas  
S.C. Probation, Parole and Pardon Services



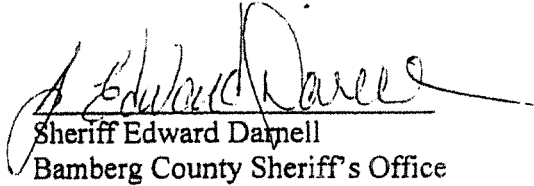
Director Alvin Taylor  
S.C. Department of Natural Resources



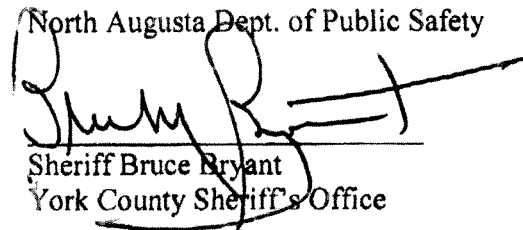
Chief Richard Nagy  
Hardeeville Police Department



Director John Thomas  
North Augusta Dept. of Public Safety



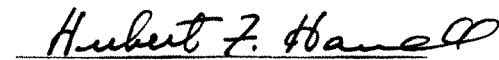
Sheriff Edward Darnell  
Bamberg County Sheriff's Office



Sheriff Bruce Bryant  
York County Sheriff's Office



Director Ronaldo Myers  
Alvin S. Glenn Detention Center



Director Hubert Harrell  
S.C. Criminal Justice Academy