

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

PART I. MUNICIPALITIES FIRE FIGHTING GENERALLY.

§8-15-1. Power and authority of governing body with respect to fires.

The governing body of every municipality shall have plenary power and authority to provide for the prevention and extinguishment of fires, and, for this purpose, it may, among other things, regulate how buildings shall be constructed, procure proper engines and implements, provide for the organization, equipment and government of volunteer fire companies or of a paid fire department, prescribe the powers and duties of such companies or department and of the several officers, provide for the appointment of officers to have command of fire fighting, prescribe what their powers and duties shall be, and impose on those who fail or refuse to obey any lawful command of such officers any penalty which the governing body is authorized by law to impose for the violation of an ordinance. It may give authority to any such officer or officers to direct the pulling down or destroying of any fence, house, building or other thing, if deemed necessary to prevent the spreading of a fire.

§8-15-2. Liability for property pulled down or destroyed to prevent spread of fire.

The owner of any property pulled down or destroyed to prevent the spreading of a fire, as specified in section one of this article, shall be entitled to recover from the municipality the actual property damage which he may have sustained by reason of the same having been pulled down or destroyed: Provided, That no one shall recover compensation for property which would have been destroyed by fire, if the same had not been pulled down or destroyed under direction as specified in section one of this article, but recovery may be had only for what could have been saved with ordinary care and diligence had no such direction been given.

§8-15-3. Municipalities empowered and authorized to contract for prevention and extinguishment of fires beyond the corporate limits.

(a) Any municipality may contract to render services in the prevention and extinguishment of fires upon property located within the state. A municipality may contract beyond its immediate boundary limit for fire service protection if fire protection is provided in accordance with and under a rural fire protection district plan based upon the fire suppression rating schedule approved by the state Insurance Commissioner. All rural fire protection district plans shall be approved by the state Fire Commission. No rural fire protection district plan providing for a municipality to contract beyond its boundary may infringe upon an existing fire department's response area without the written consent of the fire department providing fire services for that area.

No contract entered into under the authority of this section may operate to impose any greater obligation or liability upon the municipality than that with respect to property within its

corporate limits. Nothing contained in this section may be construed as requiring any municipality to contract to render such services. A municipality providing fire services under contract to any property outside its corporate limits may offer fire service under contract to any property within the county if the property owner requests the protection.

Any contract entered into under the authority of this section, on or after July 1, 1969, shall require the property owner to pay as consideration for said services an annual payment, determined as provided in the remainder of this subsection. If the municipality does not impose a fire service fee on the users of such service within the municipality as authorized in section thirteen, article thirteen of this chapter, the annual payment shall be equivalent to eighty percent of the annual tax levied for current municipal purposes upon property within said municipality of like assessed valuation to the property under contract. If the municipality does impose a fire service fee on the users of such service within the municipality, as authorized in said section, the annual payment shall be equivalent to the amount of fire service fee which would be imposed if the property under contract were located within the municipality plus at least fifty percent of the annual tax levied for current municipal purposes upon property within said municipality of like assessed valuation to the property under contract. No contract entered into under the authority of this section, and nothing herein contained, may be construed as requiring or permitting any municipality to install or maintain any special additional apparatus or equipment beyond that necessary for the protection of property within its corporate limits.

(b) The annual payments due under any such contract are payable on or before October 1, of each calendar year in which such contract remains in effect, or upon such day as may be hereinafter provided as the due date of the first installment of ad valorem taxes. If any annual payment is in default for a period of more than thirty days, it shall bear interest at the same rate as that provided for delinquent property taxes and shall be a lien upon the property under contract if a notice of such lien is recorded in the proper deed of trust book in the office of the clerk of the county commission of the county in which such property or the major portion thereof is located. Such lien is void at the expiration of two years after such defaulted annual payment became due, unless within such two-year period a civil action seeking equitable relief to enforce the lien was instituted by the municipality. The municipality may by civil action collect any annual payment and the interest thereon at any time within five years after such payment became due; and upon default in any annual payment, the municipality may cancel the contract involved.

(c) Any contract made under the authority of this section shall inure to the benefit of and be binding upon the successors in title of the person making the same contract; and such person, upon conveying the property subject to such contract, is no longer liable under such contract, except as to annual payments which were due prior to the conveyance and which remain unpaid.

(d) Any property owner may cancel any such contract with respect to the property of such owner upon giving a thirty-day written notice to the municipality, if the owner is not in default with respect to any annual payment due thereunder, except that if such notice is given subsequent to July 1, of any calendar year, the next succeeding annual payment shall be made by the property owner as soon as the amount thereof is ascertainable. Upon cancellation as aforesaid, the municipality shall deliver to the property owner a recordable release discharging such owner and such property from any further lien or obligation with respect to the annual payments. The

annual payments due under any such contract shall be made to the officials as the municipality, in the contract, designates to receive them, who likewise may receive notice of cancellation and execute upon behalf of the municipality the release for which provision is hereinbefore made.

PART II. VOLUNTEER FIRE COMPANIES.

§8-15-4. Power and authority to form fire companies; recordation of statement; organization.

Any number of persons, not less than twenty, residing within the corporate limits of a municipality without a paid fire department may form themselves into a company for extinguishing fires therein. A writing stating the formation of such company, with the names of the members thereof subscribed thereto, shall be recorded in the office of the clerk of the county commission of the county wherein such municipality or the major portion of the territory thereof is located, after which the members of the company shall elect its officers, including a commander, and make rules and regulations for effecting its object consistent with the laws of the state and the ordinances of such municipality. A volunteer fire company shall be subject to the authority of the governing body.

§8-15-5. Duties of company members; meetings to inspect equipment; report; penalty for noncompliance.

Every member of a volunteer fire company shall, upon any alarm of fire, attend, according to the ordinances of the municipality and the company's rules and regulations, and endeavor to extinguish the fire.

In addition to the meetings required by the ordinances of the municipality and the rules and regulations of the company, semiannual meetings of the company shall be held in April and October, on such days as the commander thereof may appoint, to examine the state of the engine, hose and other equipment, practice therewith and see that the same are in good condition. Within one month after any such semiannual meeting the commander of such company shall make to the governing body a written report of the names of those attending such meeting, together with a written report of the condition of the engine, hose and other equipment. For any failure to comply with the provisions of this section, the commander shall be fined not less than \$10 nor more than \$25.

§8-15-6. Dissolution of volunteer fire company.

Whenever the governing body shall ascertain that such company has failed, for three months successively, to consist of twenty effective members, or shall ascertain that it has failed for a like period of time to have and keep in good, serviceable condition an engine, hose or other proper equipment, such governing body shall declare such failure and by order dissolve the company.

Whenever a company is dissolved, the order of dissolution shall be recorded in the office of the clerk of the county court of the county wherein such municipality or the major portion of the territory thereof is located.

§8-15-7. Incorporation of volunteer fire companies; duties and obligations; dissolution.

In lieu of forming a company as specified in section four of this article, interested persons may cause the incorporation of a volunteer fire company as a nonstock, nonprofit corporation under the general corporation laws of this state. The corporation and the members thereof shall have all of the duties and obligations imposed upon unincorporated volunteer fire companies and the members thereof by the provisions of sections four and five of this article. The provisions of section six of this article shall be applicable to any such corporation, except that instead of entering an order of dissolution, the governing body shall enter an order directing the members of the corporation to take the necessary action under the general corporation laws of this state to bring about the dissolution of such corporation. Upon the entry of any such order, it shall be the duty of the members of such corporation to comply therewith.

§8-15-8. Support of volunteer fire company; return of property upon dissolution.

Any municipality may contribute to the support of its volunteer fire company by providing a firehouse, firefighting equipment, necessary paid personnel and incidental requirements to maintain such company upon an efficient basis. Upon the dissolution of any such company, all of the property contributed by the municipality shall become the property of and be returned to such municipality.

§8-15-8a. Eligibility for allocation from municipal pensions and protection fund and the Fire Protection Fund.

(a) In order to be eligible to receive revenues allocated from the municipal pensions and protection fund or the Fire Protection Fund, each volunteer or part volunteer fire company or department must meet the following requirements:

- (1) Submit and maintain current submission of fire loss data to the State Fire Marshal;
- (2) Complete or be in the process of receiving firefighters training, including section one of the West Virginia University fire service extension or its equivalent. The fire company or department must have at least ten members certified as having completed the training or if a volunteer fire company or department has twenty or fewer members, fifty percent of the active volunteer members must have completed such training; and

- (3) Comply with all applicable federal and state laws.

(b) Each volunteer or part volunteer fire company or department shall have a grace period of ninety days, beyond the allocation date in which to comply with submission requirements to the State Fire Marshal. The State Fire Marshal shall notify each volunteer or part volunteer fire company or department of the due date for submitting the information required by this section and the grace period by certified mailing requiring signature and a return receipt.

(c) When the records of a volunteer or part volunteer fire company or department are destroyed by a fire or other natural disaster, then the affected volunteer or part volunteer fire company or

department is exempt from the provisions of subdivision (1), subsection (a) of this section, for the three months period immediately following the destruction of the records.

§8-15-8b. Authorized expenditures of revenues from the municipal pensions and protection fund and the fire protection fund.

Revenues allocated to volunteer and part volunteer fire companies and departments may be expended only for the items listed in subdivisions (1) through (15) of this section.

Funds received from the state for volunteer and part volunteer fire companies and departments, pursuant to sections fourteen-d and thirty-three, article three, and section seven, article twelve-c, all of chapter thirty-three of this code, may not be commingled with funds received from any other source. Expenditures may be made for the following:

- (1) Personal protective equipment, including protective head gear, bunker coats, pants, boots, combination of bunker pants and boots, coats and gloves;
- (2) Equipment for compliance with the national fire protection standard or automotive fire apparatus, NFPA-1901;
- (3) Compliance with insurance service office recommendations relating to fire departments;
- (4) Rescue equipment, communications equipment and ambulance equipment: Provided, That no moneys received from the municipal pensions and protection fund or the fire protection fund may be used for equipment for personal vehicles owned or operated by volunteer fire company or department members;
- (5) Capital improvements reasonably required for effective and efficient fire protection service and maintenance of the capital improvements;
- (6) Retirement of debts;
- (7) Payment of utility bills;
- (8) Payment of the cost of immunizations, including any laboratory work incident to the immunizations, for firefighters against hepatitis-b and other blood borne pathogens: Provided, That the vaccine shall be purchased through the state immunization program or from the lowest cost vendor available: Provided, however, That volunteer and part volunteer fire companies and departments shall seek to obtain no cost administration of the vaccinations through local boards of health: Provided further, That in the event any volunteer or part volunteer fire company or department is unable to obtain no cost administration of the vaccinations through a local board of health, the company or department shall seek to obtain the lowest cost available for the administration of the vaccinations from a licensed health care provider;
- (9) Any filing fee required to be paid to the Legislative Auditor's Office under section fourteen, article four, chapter twelve of this code relating to sworn statements of annual expenditures

submitted by volunteer or part volunteer fire companies or departments that receive state funds or grants;

(10) Property/casualty insurance premiums for protection and indemnification against loss or damage or liability;

(11) Operating expenses reasonably required in the normal course of providing effective and efficient fire protection service, which include, but are not limited to, gasoline, bank fees, postage and accounting costs;

(12) Dues paid to national, state and county associations;

(13) Workers' Compensation premiums;

(14) Life insurance premiums to provide a benefit not to exceed \$20,000 for firefighters; and

(15) Educational and training supplies and fire prevention promotional materials, not to exceed \$500 per year.

§8-15-8c. Donation of equipment.

(a) Effective July 1, 2002, no person, company or other organization who donates fire control or rescue equipment, including federal excess or surplus property, to a volunteer fire department is subject to civil liability for any personal injury, property damages or death resulting from any defect in the equipment unless the person, company or organization acted with malice, gross negligence, recklessness or intentional misconduct which proximately caused the personal injury, property damages or death.

(b) For purposes of this section, "fire control or rescue equipment" means a vehicle, fire fighting tool, protective gear, breathing apparatus or other supply or tool used in fire fighting or fire rescue. No breathing apparatus may be donated unless, prior to the donation, it has been recertified to the manufacturer's specifications by a technician approved by the manufacturer.

(c) Unless the insured has executed a specific written rejection of such coverage in the policy, any insurer who has sold, issued or delivered an insurance policy providing liability coverage to any person, company or other organization who donates fire control or rescue equipment is barred and estopped from asserting the civil immunity granted to the insured by this section against claims or suits covered by the terms of the policy, up to the limits of the policy.

The limitation on civil liability set forth in the provisions of this section applies only to policies of insurance issued or renewed on or after July 1, 2001.

PART III. PAID FIRE DEPARTMENTS.

§8-15-9. Establishment and maintenance of paid fire department.

Any municipality may provide for, establish, equip and maintain a full-time paid fire department. A paid fire department shall be subject to the authority, control and discipline of the administrative authority. For the purposes of this article, the term "paid fire department" shall be taken to mean only a municipal fire department maintained and paid for out of public funds and whose employees are paid on a full-time basis out of public funds. The term shall not be taken to mean a department whose employees are paid nominal salaries or wages or are only paid for services actually rendered on an hourly basis.

§8-15-10. Hours of duty for firemen in a paid fire department.

On and after the effective date of this section, the members of a paid fire department, without any reduction in their total annual compensation as such members, shall not be required to remain on duty in excess of one hundred twelve hours during any fourteen consecutive days' period. The members of any such paid fire department shall, by a majority vote, determine the schedule of hours to be worked in any twenty-four-hour period: Provided, That the members of any paid fire department shall not remain on duty for more than twenty-four consecutive hours except in case of an emergency requiring the service of more than one half of the department. The chief executive officer of the department is hereby empowered, authorized and directed to make the necessary assignments as provided in this section.

§8-15-10a. Firemen who are required to work during holidays; how compensated.

From the effective date of this section, if any member of a paid fire department is required to work during a legal holiday as is specified in subsection (a), section one, article two, chapter two of this code, or if a legal holiday falls on the member's regular scheduled day off, he or she shall be allowed equal time off at such time as may be approved by the chief executive officer of the department under whom he or she serves or, in the alternative, shall be paid at a rate not less than one and one-half times his or her regular rate of pay: Provided, That if a special election of a political subdivision other than a municipality falls on a Saturday or Sunday, the municipality may choose not to recognize the day of the election as a holiday if a majority of the municipality's city council votes not to recognize the day of the election as a holiday.

§8-15-10b. Mandatory safety procedures for situations deemed immediately dangerous to life and health.

(a) For the purposes of this article:

(1) "Immediately dangerous to life or health" or "IDLH" means an atmosphere that poses an immediate threat to life, would cause irreversible adverse health effects, or would impair an individual's ability to escape from a dangerous atmosphere.

(2) "Interior structural fire fighting" means the physical activity of fire suppression, rescue or both, inside of buildings or enclosed structures which are involved in a fire situation beyond the incipient stage.

(3) "Self-contained breathing apparatus" or "SCBA" means an atmosphere supplying respirator for which the breathing air source is designed to be carried by the user.

(b) In all atmospheres that are immediately dangerous to life or health, the fire department or company shall ensure that:

(1) One or, when needed, more than one firefighter, is located outside the IDLH atmosphere;

(2) Visual, voice or signal line communication is maintained between all firefighters in the IDLH atmosphere and those outside the IDLH atmosphere;

(3) All firefighters located outside the IDLH atmosphere are trained and equipped to provide effective emergency rescue;

(4) The fire department or company, or designee authorized by the fire department or company, is notified before any firefighter located outside the IDLH atmosphere enters the IDLH atmosphere to provide emergency rescue;

(5) Once notified, the fire department or company, or designee authorized by the fire department or company, provides necessary assistance appropriate to the situation;

(6) All firefighters located outside the IDLH atmospheres are equipped with:

Pressure demand or other positive pressure self-contained breathing apparatus or a pressure demand or other positive pressure supplied-air respirator with an auxiliary SCBA, and either:

(A) Appropriate retrieval equipment for removing all firefighters who enter IDLH atmospheres where retrieval equipment would contribute to the rescue of the firefighters and would not increase the overall risk resulting from entry; or

(B) Equivalent means of rescue where retrieval equipment is not required or not available.

(c) In addition to the requirements set forth under subsection (b) of this section, when firefighters are engaging in interior structural fire fighting, the fire department or company shall ensure that:

(1) At least two firefighters enter the IDLH atmosphere and remain in visual or voice contact with one another at all times;

(2) At least two firefighters are located outside the IDLH atmosphere; and

(3) All firefighters engaged in interior structural fire fighting use an SCBA.

(d) Nothing in this section is meant to preclude:

(1) The assignment of one of the firefighters located outside the IDLH atmosphere to an additional role, such as incident commander in charge, emergency officer or safety officer, so

long as this firefighter is able to perform assistance or rescue activities without jeopardizing the safety or health of any firefighter working in the IDLH atmosphere; and

(2) The performance of emergency rescue activities by firefighters before an entire team has assembled.

§8-15-11. Qualifications for appointment or promotion to positions in paid fire departments to be ascertained by examination; provisions exclusive as to appointments, etc.; rights of certain chiefs; "appointing officer" defined.

(a) All appointments and promotions to all positions in all paid fire departments shall be made only according to qualifications and fitness to be ascertained by examinations, which, so far as practicable, shall be competitive, as hereinafter provided.

(b) No individual may be appointed, promoted, reinstated, removed, discharged, suspended or reduced in rank or pay as a paid member of any paid fire department, regardless of rank or position, in any manner or by any means other than those prescribed in this article: Provided, That in all municipalities in which the office of fire chief of a paid fire department was not covered by the provisions of former article six-a of this chapter on January 1, 1949, the office in the municipality shall be excepted from the civil service provisions of article fifteen of this chapter, until the time the governing body of the municipality shall, by appropriate ordinance or resolution adopted by a majority of its members, elect to place the office of fire chief under the civil service provisions of this article.

(c) Until the office of fire chief is placed under the civil service provisions of this article by the governing body, the member of any paid fire department now occupying such office or hereafter appointed to such office shall in all cases of removal, except for removal for good cause, retain the status he or she held in the paid fire department at the time of his or her appointment to the office of fire chief or which he or she attained during his or her term as fire chief.

(d) The term "appointing officer" as used in this article shall mean the municipal officer in whom the power of appointment of members of a paid fire department is vested by charter provision or ordinance of the municipality.

§8-15-12. Firemen's civil service commission generally.

In every municipality having a paid fire department, there shall be a "Firemen's Civil Service Commission." The commission shall consist of three commissioners, one of whom shall be appointed by the mayor of the municipality; one of whom shall be appointed by the local international association of fire fighters in the event that said local exists in the municipality, or in case no such local exists in the municipality, then by the local central body of the West Virginia Federation of Labor AFL-CIO in the event that said central body exists in the municipality, or in case that no such central body exists in the municipality, then by the West Virginia Federation of Labor AFL-CIO; and the third shall be appointed by the local chamber of commerce, or if there be none, by a local businessmen's association. The individuals appointed commissioners shall be qualified voters of the municipality for which they are appointed; and at

least two of said commissioners shall be individuals in full sympathy with the purposes of the civil service provisions of this article. Not more than two of the said commissioners, at any one time, shall be adherents of the same political party. Of the three original appointments in each municipality, the first commissioner shall be appointed by the mayor and shall serve for six years from the date of his appointment; the second commissioner shall be appointed by the local trades board, or in the absence of such board, by the international association of fire fighters, and shall serve for four years from the date of his appointment; and the third commissioner shall be appointed by the local chamber of commerce or local businessmen's association and shall serve for two years from the date of his appointment. In the event there is no local chamber of commerce or local businessmen's association at the time any appointment is to be made by it, such appointment shall be made by the other two commissioners by mutual agreement. After the original appointments, all appointments shall be made for periods of four years each by the appointing authority hereinbefore designated. In the event that any commissioner of said civil service commission shall cease to be a member thereof by virtue of death, final removal or other cause, a new commissioner shall be appointed to fill the unexpired term of said commissioner within ten days after said ex-commissioner shall have ceased to be a member of said commission. Such appointment shall be made by the officer or body who in the first instance appointed the commissioner who is no longer a member of the commission. Each year the three members of the commission shall, together, elect one of their number to act as president of the commission, who shall serve as president for one year. The mayor may, at any time, remove any commissioner or commissioners for good cause, which shall be stated in writing and made a part of the records of the commission: Provided, That once the mayor has removed any commissioner, the mayor shall within ten days thereafter file in the office of the clerk of the circuit court of the county in which the municipality or the major portion of the territory thereof is located a petition setting forth in full the reason for said removal and praying for the confirmation by said circuit court of the action of the mayor in so removing the said commissioner. A copy of said petition shall be served upon the commissioner so removed simultaneously with its filing in the office of the clerk of the circuit court and shall have precedence on the docket of said court and shall be heard by said court as soon as practicable upon the request of the removed commissioner or commissioners. All rights herein vested in said circuit court may be exercised by the judge thereof in vacation. In the event that no term of the circuit court is being held at the time of the filing of said petition, and the judge thereof cannot be reached in the county wherein the petition was filed, said petition shall be heard at the next succeeding term of said circuit court, whether regular or special, and the commissioner or commissioners so removed shall remain removed until a hearing is had upon the petition of the mayor. The court or the judge thereof in vacation shall hear and decide the issues presented by said petition. The mayor or commissioner or commissioners, as the case may be, against whom the decision of the court or the judge thereof in vacation shall be rendered, shall have the right to petition the supreme court of appeals for a review of the decision of the circuit court or the judge thereof in vacation as in other civil cases. In the event that the mayor shall fail to file his petition in the office of the clerk of the circuit court, as hereinbefore provided, within ten days after the removal of said commissioner or commissioners, such commissioner or commissioners shall immediately resume his or their position or positions as a member or members of the firemen's civil service commission.

Any resident of the municipality shall have the right at any time to file charges against and seek the removal of any member of the firemen's civil service commission of such municipality. Such charges shall be filed in the form of a petition in the office of the clerk of the circuit court of the county in which the municipality or the major portion of the territory thereof is located, and a copy of said petition shall be served upon the commissioner or commissioners sought to be removed. Said petition shall be matured for hearing and heard by said circuit court or the judge thereof in vacation in the same manner as civil proceedings in the circuit courts of this state are heard, and the party against whom the circuit court's decision is rendered shall have the right to petition the supreme court of appeals for a review of the action of the circuit court, as in other civil cases.

No commissioner shall hold any other office (other than the office of notary public) under the United States, this state or any municipality, county or other political subdivision thereof; nor shall any commissioner serve on any political committee or take any active part in the management of any political campaign.

§8-15-13. Recorder ex officio clerk of commission; clerical and stenographic services.

The recorder of the municipality shall be ex officio clerk of the firemen's civil service commission and shall supply to the commission without extra compensation all necessary clerical and stenographic services for the work of the commission.

§8-15-14. Rooms, stationery, etc., to be furnished by municipality; appropriations required.

It shall be the duty of the mayor and the heads of the departments of government of every municipality having a paid fire department to cause suitable and convenient rooms and accommodations to be assigned and provided, furnished, heated and lighted for carrying on the work and examinations of the commission. The commission may order from the proper authorities the necessary stationery, postage stamps, official seal and other articles to be supplied, and the necessary printing to be done, for its official use. It shall be the duty of the officers of every such municipality to aid the commission in all proper ways in carrying out the civil service provisions of this article, and to allow the reasonable use of public buildings, and to heat and light the same, for holding examinations and investigations, and in all proper ways to facilitate the same.

All municipalities subject to the civil service provisions of this article are hereby required to appropriate sufficient funds for the purpose of carrying out such provisions.

§8-15-15. Powers, authority and duties of firemen's civil service commission.

The firemen's civil service commission in each municipality shall:

- (1) Prescribe and enforce rules and regulations for carrying into effect the civil service provisions of this article. All rules and regulations so prescribed may, from time to time, be added to, amended or rescinded: Provided, That all rules and regulations shall be approved by the mayor and the governing body before they go into effect, but when so approved shall not be changed or

rescinded except by the commission with the approval of the mayor and governing body: Provided, however, That if the mayor and governing body take no action on a proposed rule and regulation or a proposed change or rescission submitted to them within a period of twenty days from the date of submission, then the same shall become effective as though approved by the mayor and governing body.

(2) Keep minutes of its own proceedings, and records of its examinations and other official actions. All recommendations of applicants for office, received by the said commission or by any officer having authority to make appointments to office, shall be kept and preserved for a period of ten years, and all such records, recommendations of former employees excepted, and all written causes of removal, filed with it, shall, subject to reasonable regulation, be open to public inspection.

(3) Make investigations, either sitting as a body or through a single commissioner, concerning all matters touching the enforcement and effect of the civil service provisions of this article and the rules and regulations prescribed hereunder or concerning the action of any examiner or subordinate of the commission or any individual in the public service with respect to the execution of the civil service provisions of this article; and, in the course of such investigations, each commissioner shall have the power to administer oaths and affirmations, and to take testimony.

(4) Have the power to subpoena and require the attendance of witnesses, and the production thereby of books and papers pertinent to the investigations and inquiries herein authorized, and examine them and such public records as it shall require, in relation to any matter which it has the authority to investigate. The fees of such witnesses for attendance and travel shall be the same as for witnesses before the circuit courts of this state, and shall be paid from the appropriation for the incidental expenses of the commission. All officers in the public service, and their deputies, clerks, subordinates and employees shall attend and testify when required to do so by said commission. Any disobedience to, or neglect of, any subpoena issued by the said commissioners, or any one of them, to any person, shall be held a contempt of court, and shall be punished by the circuit court of the county in which the municipality or the major portion of the territory thereof is located, or the judge thereof in vacation, as if such subpoena had been issued therefrom. The judge of such court shall, upon the application of any one of said commissioners, in any such case, cause the process of said court to issue to compel such person or persons disobeying or neglecting any such subpoena to appear and to give testimony and produce evidence before the said commissioners, or any one of them, and shall have the power to punish any such contempt.

(5) Make an annual report to the mayor showing its own actions, and its rules and regulations, and all of the exceptions thereto in force, and the practical effects thereof, and any suggestions it may have for the more effectual accomplishment of the purposes of the civil service provisions of this article. Such report shall be made available for public inspection within five days after the same shall have been delivered to the mayor of the municipality.

§8-15-16. Rules for all examinations; probationary appointments.

The firemen's civil service commission in each municipality shall make rules providing for both competitive and medical examinations for appointments and promotions to all positions in the paid fire department in the municipality, and for other matters as are necessary to carry out the purposes of the civil service provisions of this article. Any commission shall have the power and authority to require by rules a physical fitness examination as a part of its competitive examination or as a part of its medical examination: Provided, That after June 30, 1981, the medical requirements for appointment to all positions in the paid fire department in the municipality shall include, but not be limited to, the medical requirements stated in section sixteen, article twenty-two of this chapter. Due notice of the contents of the rules and of any modifications thereof shall be given, by mail, in due season, to the appointing officer; and the rules and any modifications thereof shall also be printed for public distribution. All original appointments to any positions in a paid fire department subject to the civil service provisions of this article shall be for a probationary period of one year: Provided, however, That at any time during the probationary period the probationer may be discharged for just cause, in the manner provided in section twenty-five of this article. If, at the close of this probationary term, the conduct or capacity of the probationer has not been satisfactory to the appointing officer, the probationer shall be notified, in writing, that he or she will not receive absolute appointment, whereupon his or her employment shall cease; otherwise, his or her retention in the service shall be equivalent to his or her final appointment.

§8-15-16a. Apprenticeship programs.

Any paid municipal fire department may have an apprenticeship program. If a paid municipal fire department has an apprenticeship program and the program has a final apprenticeship examination, an apprentice shall be terminated from employment after three unsuccessful attempts to pass the final apprenticeship examination. The provisions of this section apply to apprentices hired after March 31, 2003.

§8-15-17. Form of application; age and residency requirements; exceptions.

(a) The Firemen's Civil Service Commission in each municipality shall require individuals applying for admission to any competitive examination provided for under the civil service provisions of this article or under the rules of the commission to file in its office, within a reasonable time prior to the proposed examination, a formal application in which the applicant shall state under oath or affirmation:

- (1) His or her full name, residence and post-office address;
- (2) His or her United States citizenship, age and the place and date of his or her birth;
- (3) His or her state of health, and his or her physical capacity for the public service;
- (4) His or her business and employments and residences for at least three previous years; and
- (5) Any other information as may reasonably be required, touching upon the applicant's qualifications and fitness for the public service.

(b) Blank forms for the applications shall be furnished by the commission, without charge, to all individuals requesting the same.

(c) The commission may require, in connection with the application, certificates of citizens, physicians and others, having pertinent knowledge concerning the applicant, as the good of the service may require.

(d) Except as provided in subsections (e) and (f) of this section, no application for original appointment shall be received if the individual applying is less than eighteen years of age or more than thirty-five years of age at the date of his or her application.

(e) In the event any applicant formerly served upon the paid fire department of the municipality to which he or she makes application, for a period of more than one year, and resigned from the department at a time when there were no charges of misconduct or other misfeasance pending against the applicant, within a period of two years next preceding the date of his or her application, and at the time of his or her application resides within the corporate limits of the municipality in which the paid fire department to which he or she seeks appointment by reinstatement is located, then the individual shall be eligible for appointment by reinstatement in the discretion of the Firemen's Civil Service Commission, even though the applicant shall be over the age of thirty-five years, and the applicant, providing his or her former term of service so justifies, may be appointed by reinstatement to the paid fire department without a competitive examination, but the applicant shall undergo a medical examination; and if the individual shall be so appointed by reinstatement to the paid fire department, he or she shall be the lowest in rank in the department next above the probationers of the department and may not be entitled to seniority considerations.

(f) If an individual is presently employed by one paid fire department and is over the age of thirty-five, he or she may make an application to another paid fire department if:

(1) The paid fire department to which he or she is applying is serving a municipality that has elected to participate in the West Virginia Municipal Police Officers and Firefighters Retirement System created in article twenty-two-a, chapter eight of this code: Provided, That any individual applying pursuant to this subdivision is to be classified as a new employee for retirement purposes and no prior employment service can be transferred to the West Virginia Municipal Police Officers and Firefighters Retirement System; or

(2) The paid fire department to which he or she is applying is serving a municipality that has elected to participate in the West Virginia Public Employees Retirement System created in article ten, chapter five of this code: Provided, That any individual applying pursuant to this subdivision is to be classified as a new employee for retirement purposes and no prior employment service can be transferred to the West Virginia Public Employees Retirement System, except for individuals and their prior employment service already credited to them in the West Virginia Public Employees Retirement System pursuant to article ten, chapter five of this code.

(g) Individuals who are authorized to apply to a paid fire department pursuant to subsection (f) of this section shall be in the lowest rank of the department and may not be entitled to seniority considerations.

(h) Any applicant for original appointment must have been a resident for one year, during some period of time prior to the date of his or her application, of the municipality in which he or she seeks to become a member of the paid fire department: Provided, That if the commission determines it necessary it may consider for original appointment applicants who are not residents of the municipality but who have been residents of the county in which the municipality or any portion of the territory thereof is located for a period of at least one year.

§8-15-18. Character and notice of competitive examinations; qualifications of applicants; press representatives; posting eligible list; medical examinations.

All competitive examinations for appointments or promotions to all positions shall be practical in their character, and shall relate to such matters, and include such inquiries, as will fairly and fully test the comparative merit and fitness of the individual or individuals examined to discharge the duties of the employment sought by him or them. All competitive examinations shall be open to all applicants who have fulfilled the preliminary requirements specified in the other civil service provisions of this article.

Adequate public notice of the date, time and place of every competitive examination, together with information as to the kind of position to be filled, shall be given at least one week prior to such competitive examination. The said commission shall adopt reasonable rules and regulations for permitting the presence of representatives of the press at any such competitive examination. The commission shall post, in a public place at its office, the eligible list, containing the names and grades of those who have passed such competitive examinations for positions in the paid fire department, and shall indicate thereon such appointments as may be made from said list.

All applicants for appointment or promotion to any position in a paid fire department who have passed the competitive examination specified above shall, before being appointed or promoted, undergo a medical examination which shall be conducted under the supervision of a board composed of two doctors of medicine appointed for such purpose by the mayor of the municipality. Such board must certify that an applicant is free from any bodily or mental defects, deformity or diseases which might incapacitate him from the performance of the duties of the position desired and is physically fit to perform such duties before said applicant shall be appointed or promoted to any position. Notwithstanding the first sentence of this paragraph, in the event the commission deems it expedient, the medical examination may be given prior to the competitive examination, and if the medical examination is not passed as aforesaid, the applicant shall not be admitted to the competitive examination.

§8-15-18a. Individual review of test and answers from promotional examination.

(a) Any applicant for promotion to any position in a paid fire department may personally review such applicant's examination questions, answers and scores to all parts of any competitive examination within five days after the posting of results of the competitive examination. Such

five days shall not include the days the examination results are posted, nor any day that the office of the recorder of the city is not open for business to the public. The commission shall not certify the list of eligibles until all procedures before the commission under this section have been exhausted. The commission shall provide any applicant requesting review of such applicant's examination questions, answers and scores with a location to review such materials.

(b) If any applicant feels aggrieved by the answers and/or scores received on a promotional competitive examination, the commission shall, at the request of such applicant made within five days as calculated above, appoint a date, time and place for a public hearing, at which time such applicant may appear, with or without counsel. The commission shall review all parts of the competitive examination questions, answers and scores of the aggrieved applicant, and testimony shall be taken. The commission shall subpoena, at the expense of the applicant, any competent witnesses requested by such applicant.

(c) After such review, the commission shall render a decision either in favor of the applicant, and therefore adjust the eligibility list to provide for such applicant's adjusted score, or the commission shall rule that the applicant's prior score should remain unchanged. Any decision rendered by the commission under this section shall be in writing and shall set forth findings of fact and conclusions of law relied upon to reach such decision.

(d) The commission shall not certify a list of eligibles after the completion of a competitive promotional examination until all applicants for such position have exhausted the procedures before the commission set forth in this section.

(e) If any applicant is aggrieved by a decision rendered by the commission under this section, such applicant may, within twenty days of the date of the commission's decision, seek judicial review thereof in the circuit court of the county wherein such municipality is located. Nothing in this section shall be construed as depriving such applicant of the right to seek a writ of mandamus to the appropriate court within the time specified in this subsection.

§8-15-19. Refusal to examine or certify; review thereof.

The commission may refuse to examine an applicant, or after examination to certify as eligible one, who is found to lack any of the established preliminary requirements for the examination or position for which he applies; or who is physically so disabled as to be rendered unfit for the performance of the duties of the position desired; or who is addicted to the habitual use of intoxicating liquors or drugs; or who has been guilty of any crime or of infamous or notoriously disgraceful conduct; or who has been dismissed from public service for delinquency or misconduct; or who has made a false statement of any material fact, or practiced or attempted to practice any deception or fraud, in his application, in any such examination, or in securing his eligibility; or who refuses to comply with the rules and regulations of the commission.

If any applicant feels aggrieved by the action of the commission in refusing to examine him, or after an examination in refusing to certify him as an eligible, the commission shall, at the request of such applicant, appoint a date, time and place for a public hearing; at which time such applicant may appear, by himself or counsel, or both, and the commission shall then review its

refusal to make such examination or certification, and testimony shall be taken. The commission shall subpoena, at the expense of the applicant, any competent witnesses requested by him. After such review, the commission shall file in its records the testimony taken, and shall again make a decision, which decision shall be final and not subject to judicial review, but under no circumstances shall the provisions of this article be construed, in the case of a refusal to examine an applicant for promotion or to certify an applicant as eligible for promotion, as depriving such applicant of his right to seek a writ of mandamus, if the application for such writ is made within twenty days from the date of the decision refusing to examine or to certify him as eligible for promotion.

§8-15-20. Appointments from list of eligibles; special examinations for electricians or mechanics.

Every position, unless filled by promotion, reinstatement or reduction, shall be filled only in the manner specified in this section. The appointing officer shall notify the firemen's civil service commission of any vacancy in a position which he desires to fill, and shall request the certification of eligibles. The commission shall forthwith certify, from the eligible list, the names of the three individuals thereon who received the highest averages at preceding competitive examinations held under the civil service provisions of this article within a period of three years next preceding the date of the prospective appointment. The appointing officer shall, thereupon, with sole reference to the relative merit and fitness of the candidates, make an appointment from the three names so certified: Provided, That should he make objection, to the commission, to one or more of these individuals, for any of the reasons stated in section nineteen of this article, and should such objection be sustained by the commission, after a public hearing along the lines of the hearing provided for in section nineteen, if any such hearing is requested, the commission shall thereupon strike the name of any such individual from the eligible list, and certify the next highest name for each individual so stricken. As each subsequent vacancy occurs, in the same or another position, precisely the same procedure shall be followed: Provided, however, That after any name has been three times rejected for the same or another position in favor of a name or names below it on the same list, the said name shall be stricken from the list. When there are a number of positions of the same kind to be filled at the same time, each appointment shall, nevertheless, be made separately and in accordance with the foregoing provisions. When an appointment is made under the provisions of this section it shall be, in the first instance, for the probationary period of six months, as provided in section sixteen of this article: Provided further, That in the event any position as an electrician or mechanic is to be filled in any paid fire department, then the examinations to be given to applicants for either position shall be so drawn as to test only the qualifications of such applicants in regard to their ability as electricians or mechanics, such examinations to be special examinations.

§8-15-20a. Special examination for firefighter paramedic.

(a) A municipality with a firefighter's civil service commission providing an advanced life support ambulance service licensed by the state health department may also administer a special examination for the position of firefighter paramedic.

(b) An applicant for the position of firefighter paramedic shall: (1) Be a certified paramedic; (2) successfully pass the firefighter paramedic examination; and (3) meet the requirements of section seventeen of this article.

(c) Any person employed as a firefighter paramedic under the provisions of this section shall: (1) Maintain paramedic certification; (2) complete all required fire service training; and (3) comply with all other provisions of this article applicable to the continued employment of firefighters.

(d) Every position of firefighter paramedic, unless filled by promotion, reinstatement, reduction or a current firefighter, shall be filled only in the manner specified in section twenty of this article.

§8-15-21. Noncompetitive examination for filling vacancy; provisional appointment.

Whenever there are urgent reasons for filling a vacancy in any position in a paid fire department and there is no list of individuals eligible for appointment after a competitive examination, the appointing officer may nominate an individual to the firemen's civil service commission for noncompetitive examination; and if such nominee shall be certified by the said commission as qualified, after such noncompetitive examination and a medical examination, he may be appointed provisionally, to fill such vacancy until a selection and appointment can be made after competitive examination, in the manner prescribed in section twenty of this article; but such provisional appointment shall not continue for a longer period than three months, nor shall successive provisional appointments be made to the same position, under the provisions of this section.

§8-15-22. Vacancies filled by promotions; eligibility for promotion.

Vacancies in positions in a paid fire department shall be filled, so far as practicable, by promotions from among individuals holding positions in the next lower grade in the department. Promotions shall be based upon experience and by competitive written examinations to be provided by the firemen's civil service commission: Provided, That no individual shall be eligible for promotion from the lower grade to the next higher grade until such individual shall have completed at least two years of continuous service in the next lower grade in the department immediately prior to said examination and has completed the registered apprenticeship and certification program under article fifteen-a, chapter eight of this code: Provided, however, That completion of the registered apprenticeship and certification program as a requirement for promotion shall apply only to those firefighters employed since June 12, 1987. The commission shall have the power to determine in each instance whether an increase in salary constitutes a promotion.

§8-15-23. No inquiry shall be made concerning political or religious opinions or affiliations of applicants, etc.

No question in any form of application or in or during any examination shall be so framed as to elicit information concerning the political or religious opinions or affiliations of any applicant; nor shall inquiry be made concerning such opinions or affiliations; and all disclosures thereof

shall be discountenanced. No discrimination shall be exercised, threatened or promised by any individual in a paid fire department against, or in favor of, an applicant, eligible, or member of a paid fire department because of his political or religious opinions or affiliations.

§8-15-24. Political activities of members prohibited; exceptions.

(a) No member of any paid fire department may:

(1) Solicit any assessment, subscription or contribution for any political party, committee or candidate from any person who is a member or employee of the same fire department by which they are employed;

(2) Use any official authority or influence, including, but not limited to, the wearing by a member of a paid fire department of his or her uniform, for the purpose of interfering with or affecting the nomination, election or defeat of any candidate or the passage or defeat of any ballot issue: Provided, That this subdivision shall not be construed to prohibit any member of a paid fire department from casting his or her vote at any election while wearing his or her uniform;

(3) Coerce or command anyone to pay, lend or contribute anything of value to a party, committee, organization, agency or person for the nomination, election or defeat of a ballot issue; or

(4) Be a candidate for or hold any other public office in the municipality in which he or she is employed: Provided, That any paid member of a fire department that is subject to the provisions of 15 U.S.C. §1501 et seq., may not be a candidate for elective office.

(b) Other types of partisan or nonpartisan political activities not inconsistent with the provisions of subsection (a) of this section are permissible political activities for members of paid fire departments.

(c) No person shall be appointed or promoted to or demoted or dismissed from any position in a paid fire department or in any way favored or discriminated against because of his or her engagement in any political activities authorized by the provisions of this section. Any elected or appointed official who violates the provisions of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by the penalties contained in section twenty-six, article fifteen, chapter eight of this code.

§8-15-25. Removal, discharge, suspension or reduction in rank or pay; hearing; attorney fees; appeal; reduction in number of members.

(a) No member of any paid fire department subject to the civil service provisions of this article may be removed, discharged, suspended or reduced in rank or pay except for just cause, which may not be religious or political, except as provided in section twenty-four of this article; and no such member may be removed, discharged, suspended or reduced in rank or pay except as provided by the civil service provisions of this article, and in no event until the member has been

furnished with a written statement of the reasons for the action. In every case of such removal, discharge, suspension or reduction, a copy of the statement of reasons therefor and of the written answer thereto, if the member desires to file such written answer, shall be furnished to the firemen's civil service commission and entered upon its records. If the member demands it, the commission shall grant a public hearing, which hearing shall be held within a period of ten days from the filing of the charges in writing or the written answer thereto, whichever shall last occur. At the hearing, the burden shall be upon the removing, discharging, suspending or reducing officer, hereinafter in this section referred to as "removing officer", to show just cause for his or her action, and in the event the removing officer fails to show just cause for the action before the commission, then the member shall be reinstated with full pay, forthwith and without any additional order, for the entire period during which the member may have been prevented from performing his or her usual employment, and no charges may be officially recorded against the member's record. The member, if reinstated or exonerated, shall, if represented by legal counsel, be awarded reasonable attorney fees to be determined by the commission and paid by the governing body. A written record of all testimony taken at the hearing shall be kept and preserved by this commission, which record shall be sealed and not be open to public inspection unless an appeal is taken from the action of the commission.

(b) In the event the commission sustains the action of the removing officer, the member has an immediate right of appeal to the circuit court of the county wherein the municipality or the major portion of the territory thereof is located. In the event that the commission reinstates the member, the removing officer has an immediate right of appeal to the circuit court. In the event either the removing officer or the member objects to the amount of the attorney fees awarded to the member, the objecting party has an immediate right of appeal to the circuit court. Any appeal must be taken within ninety days from the date of entry by the commission of its final order. Upon an appeal being taken and docketed with the clerk of the circuit court of the county, the circuit court shall proceed to hear the appeal upon the original record made before the commission and no additional proof may be permitted to be introduced. The circuit court's decision is final, but the member or removing officer, as the case may be, against whom the decision of the circuit court is rendered has the right to petition the Supreme Court of Appeals for a review of the circuit court's decision as in other civil cases. The member or removing officer also has the right, where appropriate, to seek, in lieu of an appeal, a writ of mandamus. The member, if reinstated or exonerated by the circuit court or by the Supreme Court of Appeals, shall, if represented by legal counsel, be awarded reasonable attorney fees as approved by the court and the fees shall be paid by the governing body.

(c) The removing officer and the member shall at all times, both before the commission and upon appeal, be given the right to employ counsel to represent them.

(d) If for reasons of economy or other reasons it is deemed necessary by any such municipality to reduce the number of paid members of its paid fire department, the municipality shall follow the procedure set forth in this subsection. The reduction in members of the paid fire department of the municipality shall be effected by suspending the last person or persons, including probationers, who have been appointed to the paid fire department. The removal shall be accomplished by suspending the number desired in the inverse order of their appointment: Provided, That in the event the said paid fire department is increased in numbers to the strength

existing prior to the reduction of members, the members suspended under the terms of this subsection shall be reinstated in the inverse order of their suspension before any new appointments to said paid fire department are made.

§8-15-26. Offenses and penalties.

Any individual who makes an appointment or promotion to any position, or selects an individual for employment contrary to the civil service provisions of this article, or willfully refuses or neglects otherwise to comply with, or to conform to, any of the civil service provisions of this article, or violates any of those provisions, is guilty of a misdemeanor.

Any commissioner or examiner, or any other individual, who willfully, by himself or herself or in cooperation with one or more persons, defeats, deceives or obstructs any individual with respect to his or her right of examination or registration according to the civil service provisions of this article, or to any rules and regulations prescribed pursuant thereto, or who willfully or corruptly, falsely marks, grades, estimates or reports upon any such examination or proper standing of any individual so examined, registered or certified, pursuant to the civil service provisions of this article, or aids in so doing, or who willfully or corruptly furnishes to any individual any special or secret information, for the purpose of either improving or injuring the prospects or chances of appointment or promotion to any position of any individual so examined, registered or certified, or to be so examined, registered or certified, or who impersonates any other individual, or permit or aid in any manner any other individual to impersonate him or her, in connection with any such examination or registration, or application or request to be examined or registered, is, for each offense, guilty of a misdemeanor.

Any person convicted of any of these misdemeanor offenses shall be punished by a fine of not less than \$500, nor more than \$10,000 or by confinement in jail for a term not exceeding one year, or by both fine and confinement, in the discretion of the court.

§8-15-27. Repeal of conflicting acts and provisions; civil service provisions of article exclusive; status or tenure not affected.

All acts, whether general, special, local or special legislative charters, or parts thereof, in relation to any civil service measure affecting any paid fire department inconsistent with the civil service provisions of this article shall be, and the same are, hereby repealed insofar as such inconsistencies shall exist. It is intended by the civil service provisions of this article to furnish a complete and exclusive system for the appointment, promotion, reinstatement, removal, discharge, suspension and reduction of all members of all paid fire departments in all municipalities. The status or tenure of all members of any paid fire department, which members were employed on the effective date of this article, shall not be affected by the enactment of this article, but all such members shall be subject to all of the civil service provisions of this article with like effect as if they had been appointed members hereunder.