

**§15A-11-1. State Fire Commission continued; composition; qualifications; appointment; terms of office; removal; vacancies; compensation and expenses.**

(a) The Fire Commission is hereby continued, which shall consist of 13 voting members, with the State Fire Marshal sitting as an ex officio nonvoting member. The voting members shall be qualified by experience and training to deal with the matters which are the responsibilities of the commission. All current members of the commission are continued in their respective term. The officers of the West Virginia Fire Chief's Association, the West Virginia Firemen's Association, the West Virginia Professional Fire Fighters Association, the West Virginia Professional Fire Chiefs Association, the West Virginia Manufacturers Association, the Professional Independent Insurance Agents of West Virginia, and the West Virginia Society of Architects shall submit a list of names of persons recommended by each of these associations to the Governor for consideration in appointing the State Fire Commission. The West Virginia Professional Fire Fighters Association and the West Virginia Professional Fire Chiefs Association shall recommend the names of two persons from full-time paid fire departments. The West Virginia Fire Chief's Association and the West Virginia Firemen's Association shall each recommend the names of three persons from volunteer fire departments. The West Virginia Manufacturers Association shall recommend the names of three persons to represent business and industry. The Professional Independent Insurance Agents of West Virginia shall recommend the names of two persons to represent the fire insurance industry. The West Virginia Society of Architects shall recommend the names of two persons to represent registered architects. Appointments to the commission shall be made by the Governor, by and with the advice and consent of the Senate, from the lists of qualified persons recommended by the organizations. Three members shall be appointed to represent full-time paid fire departments, one member shall be appointed to represent the full-time paid fire chiefs, three members shall be appointed to represent volunteer fire departments, and two members shall be appointed to represent the volunteer fire chiefs. Two members shall be appointed to represent business and industry and one member shall be appointed to represent the fire insurance industry. One member shall be appointed to represent registered architects. The term of office of the members shall be staggered five-year terms. Vacancies shall be filled in the same manner as the original appointment but only for the remainder of a term. All members serve at the will and pleasure of the Governor, and may be removed for any or no reason.

(b) The members of the State Fire Commission shall serve without compensation but shall be reimbursed for their reasonable and necessary expenses actually incurred in the performance of their duties.

(c) All costs incidental to the administration of the commission shall be paid from the special fund by the State Fire Marshal established in §15A-10-7 of this code.

### **§15A-11-2. Chairperson; vice chairperson; meetings; quorum.**

(a) The State Fire Commission shall select a chairperson and vice chairperson from among its members and shall hold regular meetings at least once every two months and special meetings when called by its chairman. In the absence of the chairman, the vice chairman shall exercise the powers and duties of the chairman.

(b) No business shall be transacted by the State Fire Commission in the absence of a quorum which shall be seven members, one of whom must be the chairperson or vice chairperson.

### **§15A-11-3. Promulgation of rules and State Fire Code.**

(a) Pursuant to the provisions of § 29A-3- 1 *et seq.* of this code, the State Fire Commission shall propose and promulgate comprehensive rules for the safeguarding of life and property from the hazards of fire and explosion to be known as the State Fire Code. Rules embodied in the State Fire Code shall be in accordance with standard safe practice as embodied in widely recognized standards of good practice for fire prevention and fire protection and have the force and effect of law in the several counties, municipalities, and political subdivisions of the state: *Provided*, That buildings or structures utilized primarily for agricultural purposes shall be exempt from the provisions of the State Building Code, the State Fire Code, and any county or municipal building code or ordinance that is or may be adopted, such as the ICC International Property Maintenance Code. The rule shall include, but not be limited to, standard safe practices for the design, construction, location, installation, maintenance, and operation of liquefied petroleum gas systems, and training standards and qualifications for persons who install or maintain liquefied petroleum gas systems.

(b) The State Fire Commission may establish work groups and seek input in the rulemaking process from groups or individuals with an interest in any aspect of the fire code.

(c) For purposes of this section, the term “agricultural purposes” means the raising, cultivation, drying, harvesting, marketing, production, or storage of agricultural products, including both crops and livestock, for sale or use in agriculture or agricultural production, or the storage of machinery or equipment used in support of agricultural production.

### **§15A-11-4. Hazardous substance emergency response training programs.**

(a) The State Fire Commission shall promulgate rules pursuant to §29A-3-1 *et seq.* of this code establishing criteria for qualified training programs in hazardous substance

emergency response activities and procedures for such qualified training programs to be certified by the State Fire Marshal.

(b) For the purposes of this section, "hazardous substance" means any hazardous substance as defined in chapter 88, Acts of the Legislature, regular session, 1985, any "chemical substances and materials" listed in the rules promulgated by the Commissioner of Labor pursuant to §21-3-8 of this code, and any "hazardous waste" as defined in §22-18-1 *et seq.* of this code.

#### **§15A-11-5. Promulgation of rules and statewide building code.**

(a) The State Fire Commission shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to safeguard life and property and to ensure the quality of construction of all structures erected or renovated throughout this state through the adoption of a State Building Code. The rule may include provisions regarding building construction, renovation, and all other aspects as related to the construction and mechanical operations of a structure. The rule shall include building energy codes. The rules shall be in accordance with standard safe practices so embodied in widely recognized standards of good practice for building construction and all aspects related thereto and have force and effect in those counties and municipalities adopting the State Building Code: *Provided*, That each county or municipality may adopt the code to the extent that it is only prospective and not retroactive in its application; *Provided, however*, That buildings or structures utilized primarily for agricultural purposes shall be exempt from the provisions of the State Building Code, the State Fire Code, and any county or municipal building code or ordinance that is or may be adopted, such as the ICC International Property Maintenance Code.

(b) The State Fire Commission may establish advisory boards as it considers appropriate to encourage representative participation in subsequent rulemaking from groups or individuals with an interest in any aspect of the State Building Code or related construction or renovation practices.

(c) For the purpose of this section, the term "building code" is intended to include all aspects of safe building construction and mechanical operations and all safety aspects related thereto. Whenever any other state law, county, or municipal ordinance, or regulation of any agency thereof is more stringent or imposes a higher standard than is required by the State Building Code, the provisions of the state law, county or municipal ordinance, or regulation of any agency thereof governs if they are not inconsistent with the laws of West Virginia and are not contrary to recognized standards and good engineering practices. In any question, the decision of the State Fire Commission determines the relative priority of any such state law, county or municipal ordinance, or regulation of any agency thereof, and determines compliance with State Building Code by officials of the state, counties, municipalities, and political subdivisions of the state.

(d) Enforcement of the provisions of the State Building Code is the responsibility of the respective local jurisdiction. Also, any county or municipality may enter into an agreement with any other county or municipality to provide inspection and enforcement services: *Provided*, That any county or municipality may adopt the State Building Code with or without adopting the BOCA National Property Maintenance Code. If a county adopts a property maintenance code or ordinance including, but not limited to, the ICC International Property Maintenance Code, such code or ordinance shall exempt all property used for agricultural purposes or otherwise cause such property to be exempted from any such code or ordinance from enforcement. Any such code that may be or is adopted by any county shall be and is unenforceable as to agricultural property.

(e) After the State Fire Commission has promulgated rules as provided in this section, each county or municipality intending to adopt the State Building Code shall notify the State Fire Marshal of its adoption.

(f) The State Fire Commission may conduct public meetings in each county or municipality adopting the State Building Code to explain the provisions of the rules.

(g) The provisions of the State Building Code relating to the construction, repair, alteration, restoration, and movement of structures are not mandatory for existing buildings and structures identified and classified by the State Register of Historic Places under the provisions of §29-1-8 of this code or the National Register of Historic Places, pursuant to 16 U.S.C. § 470a. Prior to renovations regarding the application of the State Building Code, in relation to historical preservation of structures identified as such, the authority having jurisdiction shall consult with the Division of Culture and History, State Historic Preservation Office. The final decision is vested in the State Fire Marshal. Additions constructed on a historic building are not excluded from complying with the State Building Code.

(h) For purposes of this section, the term “agricultural purposes” has the same meaning as is set forth in §15A-11-3 of this code.

#### **§15A-11-6. Public hearings and notice.**

Prior to the promulgation of a State Fire Code, or any amendments thereto, as provided in this article, the State Fire Commission shall hold at least one public hearing on the proposed regulations contained therein, notice of which shall be the same as the notice for a hearing as provided in the Administrative Procedure Act, chapter 29A of this code.

#### **§15A-11-7. Commission’s powers in conduct of public hearing.**

For the purposes of any public hearing under this article, the State Fire Commission is empowered and authorized to issue subpoenas and subpoenas duces tecum, to take testimony, and to administer oaths to any witness in any proceeding or examination instituted before it or conducted by it with reference to any matter within its jurisdiction. In all hearings or proceedings before the State Fire Commission, the evidence of witnesses and the production of documentary evidence may be required at any designated place of hearing; and in case of disobedience to a subpoena or other process, the State Fire Commission or any party to the proceedings before the commission may invoke the aid of any circuit court in requiring the evidence and testimony of witnesses and the production of papers, books, and documents. Such court, in case of refusal to obey the subpoena issued to any person subject to the provisions of this chapter, shall issue an order requiring such person to appear before the State Fire Commission and produce all books and papers, if so ordered, and give evidence touching the matter in question.

**§15A-11-8. Powers, duties, and authority of State Fire Commission.**

(a) All state and area training and education in fire service shall be coordinated by the State Fire Commission. The State Fire Marshal shall ensure that these programs are operated throughout the state at a level consistent with needs identified by the commission. Beginning on the effective date of the amendment to this section, all trainings approved by the State Fire Commission for Fire Officer 2, shall contain a section on the current laws, rules and regulations governing the fire service. All trainings approved by the State Fire Commission for Firefighter 1, shall contain a section on the Fire Commission, and the Fire Marshal's Office, and the operations of both.

(b) The State Fire Commission may make recommendations to the State Insurance Commissioner regarding town classifications for fire insurance rates.

(c) The formation of any new fire department, including volunteer fire departments, requires the concurrence of the State Fire Commission. The State Fire Commission shall develop a method of certification which can be applied to all fire departments and volunteer fire departments.

(d) The State Fire Commission shall certify the chief, or acting chief, of every department. The Fire Commission shall propose emergency legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to implement the program established pursuant to this subsection.

(e) The State Fire Commission shall develop a plan for fire prevention and control which shall include, but not be limited to, the following areas: manpower needs, location of training centers, location of fire prevention and control units, communications, fire-fighting facilities, water sources, vehicular needs, public education and information, public participation, standardization in recordkeeping, evaluation of personnel, reporting

of fire hazards, programs on mutual aid, location of public safety agencies, outline of fire prevention programs, and accessibility of fire prevention information.

(f) The State Fire Commission shall establish fire protection areas and at such times as funds are available shall establish field offices for inspection, planning, and certification.

(g) The State Fire Marshal may accept, on behalf of the State Fire Commission, gifts, grants, court-ordered civil forfeiture proceedings, and bequests of funds or property from individuals, foundations, corporations, the federal government, governmental agencies, and other organizations or institutions. The State Fire Marshal, acting on behalf of the State Fire Commission, may enter into, sign, and execute any agreements, and do and perform any acts that may be necessary, useful, desirable, or convenient to effectuate the purposes of this article. Moneys from gifts, grants, civil forfeiture proceedings, and bequests received by the State Fire Marshal shall be deposited into the special account set forth in §15A-10-7 of this code, and the State Fire Marshal, with the approval of the State Fire Commission, may make expenditures of, or use of any tangible property, in order to effectuate the purposes of this article.

(h) The State Fire Commission shall establish standards and procedures for fire departments to implement the provisions of this section with regard to the following:

(1) Fire prevention and control;

(2) Uniform standards of performance, equipment, and training;

(3) Certification;

(4) Training and education in fire service, subject to the rule-making requirements set forth in §15A-11-9 of this code; and

(5) The creation, operation, and responsibilities of fire departments throughout the state.

(i) The State Fire Commission may establish advisory boards as it considers appropriate to encourage representative participation in subsequent rulemaking from groups or individuals with an interest in any aspect of the State Fire or Building Code or related construction or renovation practices.

(j) The State Fire Commission may deny, suspend, or revoke certification of any fire department, or any chief or acting chief, in the State of West Virginia if a fire department is not in compliance with all applicable laws, rules, and regulations, or the chief or acting chief, does not operate the department in compliance with all applicable laws, rules and regulations, or allows the department, or members of the department to act or operate in a manner that is not in compliance with all applicable laws, rules and regulations.

(k) Appeals from any final decision of the Fire Commission shall be heard by the Office of Administrative Hearings pursuant to this chapter, except as otherwise provided in §15A-10-9(b) of this code.

(l) The State Fire Commission shall develop procedures to authorize persons with specialized training, but who are not certified as firefighters, to be members of a volunteer fire department to only perform specialized functions, none of which shall be or include fire fighting. These specialized functions can include, but are not limited to, swift water rescue, search and rescue, trench rescue, and confined space rescue. The State Fire Commission shall propose legislative rules, and may propose emergency legislative rules, for promulgation in accordance with §29A-3-1 *et seq.* of this code to implement this program, and to set minimum training standards for these types of specialized members.

(m) The State Fire Commission shall, in compliance with §21-6-11 of this code, propose emergency legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to specify what activities junior firefighters may and may not participate in.

(n) The State Fire Commission shall, by legislative rules proposed for promulgation in accordance with §29A-3-1 *et seq.* of this code, establish minimum probationary volunteer firefighter standards.

(1) For the purpose of this subsection, a probationary firefighter means an active member of a volunteer fire department who is 18 years old or older and is not a certified firefighter.

(2) A person may serve as a probationary firefighter, at the discretion of the fire chief, for a period not to exceed five years.

(3) The Legislature finds that an emergency exists, and therefore, the Fire Commission shall propose an emergency rule to implement the provisions of this subsection in accordance with §29A-3-15 of this code by October 1, 2022.

#### **§15A-11-9. Volunteer firefighters' training and equipment.**

(a) The State Fire Commission shall maintain oversight and authority over training, equipment requirements, and performance standards for volunteer fire departments and its members, establishing and maintaining said requirements pursuant to

legislative rule, in accordance with the provisions of §29A-3-1 *et seq.* of this code, to establish training requirements for firefighters which:

(1) Provide for:

(A) Minimum training levels for rescue and firefighting;

(B) Minimum levels of equipment needed to protect life and property within fire service areas;

(C) Minimum performance standards the departments shall meet in response times, communications, levels of water flow, and pressure; and

(D) Other performance measures as considered necessary to meet the overall goals of improved fire prevention and control;

(2) Allow the training to be offered in segments, blocks, or modules: *Provided*, That no firefighter may engage in fire fighting activities, except in response to wildland fires, until he or she has completed all firefighter one training: *Provided, however*, That support members may provide ancillary assistance to firefighters as defined by the rule;

(3) Provide for online training;

(4) Allow testing to be done in person or online; and

(5) Establish the testing requirements which include:

(A) If the individual is required to test in person, then the tests shall be given regionally at various times throughout the year; or

(B) If the individual is authorized to test online, then the requirements for online testing shall be established.

(b) Notwithstanding any provision of this code to the contrary, the State Fire Commission may establish or continue a pilot project program which implements changes to standards imposed on volunteer fire fighting that address problems facing volunteer fire departments in the state, including issues related to training, recruitment, and retention.



(1) The State Fire Commission may limit the number of participating volunteer fire departments in the pilot project program.

(2) The State Fire Commission shall set the rules and conditions for participating volunteer fire departments by policies adopted and ratified by the commission.

(3) On July 1 of each year, the State Fire Commission shall annually provide a full summary report of the status of the program to the Joint Committee on Government and Finance.

(c) After conducting its evaluations of any fire department, the Office of the State Fire Marshal shall issue a certificate of evaluation to the chief of that department, which shall be made and issued in duplicate. The certificate of evaluation shall show the date of each evaluation and the notations relating thereto by the Office of the State Fire Marshal, and the most recent certificate of evaluation shall be posted at the fire department in such a conspicuous place and manner that the results are visible to the members of the department, and to members of the public.

**§15A-11-10. Courtesy certification of firefighters in surrounding states to serve as volunteer firefighter.**

(a) It is the intention of the Legislature to permit individuals who have been certified as professional or volunteer firefighters in a state bordering West Virginia to serve as volunteer firefighters in West Virginia.

(b) Beginning July 1, 2020, the State Fire Commission shall establish a process by which a courtesy certification to serve as a volunteer firefighter in this state may be issued to any person who satisfies the following requirements:

(1) Is a certified professional or volunteer firefighter in good standing in a state bordering West Virginia;

(2) Complies with the application process and procedures established by the State Fire Commission; and

(3) Submits any required fee.

(c) Issuance of a courtesy certification shall not be withheld by the State Fire Commission based on an individual's failure to satisfy the training requirements for

volunteer firefighters set forth in legislative rules promulgated pursuant to §15A-11-9 of this code.

(d) The State Fire Commission shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to implement the provisions of this section.

(e) Any courtesy certification issued pursuant to this section may be revoked at any time if the individual's certification in the bordering state is restricted, revoked, or otherwise expires.

(f) Any courtesy certification issued pursuant to this section must be renewed biennially.

(g) The State Fire Commission may deny, suspend, or revoke a courtesy certification if the certificate holder is, or has acted, not in compliance with all applicable laws, rules, and regulations.

(h) Appeals from any final decision of the Fire Commission shall be heard by the Office of Administrative Hearings pursuant to this chapter.

**§15A-11-11. Fire Service Equipment and Training Fund; creation of fire service equipment and training grant; reports of ineligibility to State Fire Marshal.**

(a) There is hereby continued in the Treasury a special revenue fund to be known as the Fire Service Equipment and Training Fund. Expenditures from the fund by the State Fire Commission are authorized from collections. The fund may only be used for the purpose of providing grants to equip volunteer and part-volunteer fire companies and departments and their members, and to train volunteer and part-volunteer firefighters. Any balance remaining in the fund at the end of any fiscal year does not revert to the General Revenue Fund, but remains in the Special Revenue Fund.

(b) The State Fire Commission shall establish a grant program for equipment and training for volunteer and part-volunteer fire companies and departments. Such grant program shall be open to all volunteer and part-volunteer fire companies and departments. In making grants pursuant to this section, the State Fire Marshal shall consider:

(1) The number of emergency and nonemergency calls responded to by the company or department;

(2) The activities and responses of the company or department;

(3) The revenues received by the company or department from federal, state, county, municipal, local, and other sources; and

(4) The company's or department's assets, expenditures, and other liabilities, including whether the fire company or department has availed itself of available statewide contracts.

(c) The State Fire Commission may promulgate emergency rules and shall propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code as may be necessary to implement and comply with the provisions of this section.

(d) The Legislative Auditor shall notify the State Fire Marshal of any volunteer or part-volunteer fire company or department that is ineligible to receive grant funds due to the company's or department's failure to file required bank statements or financial reports or failure to comply with an audit or review by the Legislative Auditor. A volunteer or part-volunteer fire company or department reported by the Legislative Auditor shall be ineligible to receive funds under this section until the Legislative Auditor notifies the State Fire Marshal that the company or department has come into compliance.