

1                                    **Senate Bill No. 69**

2    (By Senators Sypolt, Barnes, Jenkins, D. Facemire and Williams)

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4    [Introduced January 12, 2011; referred to the Committee on  
5    Government Organization; and then to the Committee on the  
6                                    Judiciary.]  
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11 A BILL to amend and reenact §29-12A-3 of the Code of West Virginia,  
12        1931, as amended, relating to clarifying that fire chiefs and  
13        line officers working with paid and volunteer fire departments  
14        are employees who are provided immunity under the Governmental  
15        Tort Claims and Insurance Reform Act.

16 *Be it enacted by the Legislature of West Virginia:*

17        That §29-12A-3 of the Code of West Virginia, 1931, as amended,  
18 be amended and reenacted to read as follows:

19 **ARTICLE 12A. GOVERNMENTAL TORT CLAIMS AND INSURANCE REFORM ACT.**

20 **§29-12A-3. Definitions.**

21        As used in this article:

22        (a) "Employee" means an officer, agent, employee, or servant,  
23 whether compensated or not, whether full-time or not, who is  
24 authorized to act and is acting with the scope of his or her  
25 employment for a political subdivision. "Employee" includes, but is  
26 not limited to, any elected or appointed official of a political

1 subdivision and fire chiefs and line officers working with paid or  
2 volunteer fire departments. "Employee" does not include an  
3 independent contractor of a political subdivision.

4 (b) "Municipality" means any incorporated city, town or  
5 village and all institutions, agencies or instrumentalities of a  
6 municipality.

7 (c) "Political subdivision" means any county commission,  
8 municipality and county board of education; any separate  
9 corporation or instrumentality established by one or more counties  
10 or municipalities, as permitted by law; any instrumentality  
11 supported in most part by municipalities; any public body charged  
12 by law with the performance of a government function and whose  
13 jurisdiction is coextensive with one or more counties, cities or  
14 towns; a combined city-county health department created pursuant to  
15 article two, chapter sixteen of this code; public service  
16 districts; and other instrumentalities including, but not limited  
17 to, volunteer fire departments and emergency service organizations  
18 as recognized by an appropriate public body and authorized by law  
19 to perform a government function: *Provided*, That hospitals of a  
20 political subdivision and their employees are expressly excluded  
21 from the provisions of this article.

22 (d) "Scope of employment" means performance by an employee  
23 acting in good faith within the duties of his or her office or  
24 employment or tasks lawfully assigned by a competent authority but  
25 does not include corruption or fraud.

26 (e) "State" means the State of West Virginia, including, but

1 not limited to, the Legislature, the Supreme Court of Appeals, the  
2 offices of all elected state officers, and all departments, boards,  
3 offices, commissions, agencies, colleges and universities,  
4 institutions, and other instrumentalities of the State of West  
5 Virginia. "State" does not include political subdivisions.

NOTE: The purpose of this bill is to clarify that fire chiefs and line officers working with paid and volunteer fire departments are employees that are provided immunity under the Governmental Tort Claims and Insurance Reform Act.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.