

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Originating

Senate Bill 625

BY SENATORS GAUNCH, MAYNARD, BOSO, CLEMENTS,

JEFFRIES, PALUMBO, SMITH, SYPOLT, AND WELD

[Originating in the Committee on Government

Organization; Reported on February 19, 2018]

1 A BILL to amend and reenact §5A-3-8 of the Code of West Virginia, 1931, as amended; to amend
2 said code by adding thereto a new section, designated §5A-3-8a; to amend and reenact
3 §5H-1-2 of said code; to amend and reenact §7-1-3d of said code; to amend said code by
4 adding thereto a new section, designated §11-21-25; to amend and reenact §16-4C-6 and
5 §16-4C-8 of said code; to amend said code by adding thereto a new section, designated
6 §16-4C-24; to amend said code by adding thereto a new section, designated §17-2A-8d;
7 to amend and reenact §29-3-12 of said code; to amend said code by adding thereto two
8 new sections, designated §29-3-5e and §29-3-8; to amend and reenact §33-3-33 of said
9 code; and to amend said code by adding thereto a new section, designated §33-3-33b, all
10 relating to creating the West Virginia Volunteer Fire and Rescue Act of 2018; requiring
11 Director of Purchasing Division make facilities and services of division available to fire
12 departments and companies and certain emergency medical services agencies;
13 authorizing director to provide for implementation by legislative rules or other agreement;
14 authorizing payment of death benefits to survivors of firefighter, EMS, or law-enforcement
15 provider who dies in the performance of, or as a result of the performance of, his or her
16 duties; increasing death benefits to be paid; providing for written designation of beneficiary
17 to be made with State Fire Marshal or Commissioner of the Bureau for Public Health;
18 requiring any county fire prevention units to be formed and recognized under the
19 regulations of the State Fire Commission for local fire departments; increasing authorized
20 reimbursement rate amount; providing exception for incidents or accidents involving
21 hazardous materials; requiring payment of amounts owed as reimbursement within 30
22 days; authorizing written agreements between fire department or company and
23 responsible party; permitting fire company or department to proceed to recover costs if
24 payment or agreement not reached within 90 days; defining terms; creating volunteer first
25 responder tax credit against an individual's personal property taxes based on number of
26 activities an individual engages in with his or her first responder organization; requiring

27 notarized certification by the chief officer of the first responder organization; making tax
28 credit nonrefundable; requiring Tax Commissioner to develop forms for certification;
29 authorizing Commissioner of the Bureau for Public Health to establish one or more
30 statewide contracts for equipment and supplies utilized by emergency medical services
31 agencies; requiring statewide contracts be made available to certain emergency medical
32 services agencies; authorizing development of uniform standards for equipment and
33 supplies used by emergency medical services agencies; giving legislative rule-making
34 authority to Commissioner of the Bureau for Public Health to implement provisions;
35 requiring Commissioner of the Bureau for Public Health to recognize and give full credit
36 for all continuing education credits approved or recognized by state or nationally
37 recognized accrediting body; establishing special revenue fund known as Emergency
38 Medical Services Equipment and Training Fund; authorizing use of fund for grants to equip
39 emergency medical service providers and train emergency medical services personnel;
40 requiring Commissioner of the Bureau for Public Health establish grant program for
41 equipment and training of emergency medical services providers and personnel; setting
42 eligibility and certain priorities for grant program; granting rule-making authority to
43 implement grant program; authorizing Commissioner of Division of Highways enter into
44 reimbursement agreements with certain fire departments for services provided relating to
45 tree or debris removal from state highways and rights-of-way when requested; granting
46 legislative rule-making authority to implement reimbursement program; setting minimum
47 provisions for legislative rule; authorizing State Fire Marshal establish one or more
48 statewide contracts for equipment and supplies utilized by fire companies and
49 departments; requiring statewide contracts be made available to certain fire companies
50 and departments as well as any other agency or subdivision with a need for those
51 equipment or supplies; authorizing development of uniform standards for equipment and
52 supplies used by fire companies and departments; giving legislative rule-making authority

53 to State Fire Commission to implement provisions; establishing special revenue fund
54 known as Fire Service Equipment and Training Fund; authorizing use of fund for grants to
55 equip volunteer and part volunteer fire companies and departments and their members
56 and train volunteer and part volunteer firefighters; requiring State Fire Marshal establish
57 grant program for equipment and training of volunteer and part volunteer fire companies
58 and departments and volunteer firefighters; setting eligibility and certain factors for State
59 Fire Marshal to consider in making grants; granting rule-making authority to implement
60 grant program; requiring State Fire Marshal prepare certain reports and make certain
61 recommendations; increasing surcharge on fire and casualty insurance policies;
62 exempting certain casualty insurance policies from surcharge; prohibiting premium taxes,
63 agent commissions, and other assessments from being charged against surcharge;
64 designating where funds collected from surcharge are to be deposited; requiring study
65 and report from Insurance Commissioner regarding issues related to workers'
66 compensation for volunteer and part volunteer fire departments; eliminating obsolete
67 language; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 3. PURCHASING DIVISION.

§5A-3-8. Facilities of division available to local governmental bodies.

1 The director shall make available the facilities and services of his or her division to
2 counties, county schools, municipalities, urban mass transportation authorities, created pursuant
3 to §8-27-1 et seq. of this code, mass transportation divisions of county and municipal
4 governments, ~~volunteer~~ fire departments, and other local governmental bodies within this state.
5 The actual expenses incurred thereby shall be paid by the local governmental body.

§5A-3-8a. Facilities of division available to volunteer fire departments and emergency

medical services.

1 The director shall make available the facilities and services of his or her division to fire
2 departments and companies, including volunteer and part-volunteer departments and companies,
3 as well as to emergency medical services agencies that are designated to provide emergency
4 response by one or more county emergency dispatch centers. The director shall provide, whether
5 by legislative rule proposed pursuant to §29-3-1 et seq. of this code or other agreement entered
6 into between the director and another governmental body or agency of the state, for the
7 implementation of this section.

CHAPTER 5H. SURVIVOR BENEFITS.

**ARTICLE 1. WEST VIRGINIA FIRE, EMS, AND LAW-ENFORCEMENT OFFICER
SURVIVOR BENEFIT ACT.**

§5H-1-2. Death benefit for survivors.

1 (a) In the event a firefighter, EMS, or law-enforcement provider ~~is killed~~ dies in the
2 performance of, or as a result of the performance of, his or her duties, the department chief, within
3 30 days from the date of death shall submit certification of the death to the Governor's Office.

4 (b) This act includes both paid and volunteer fire, EMS, and law-enforcement personnel
5 acting in the performance of his or her duties of any fire, EMS, or law-enforcement department
6 certified by the State of West Virginia.

7 (c) A firefighter, EMS, or law-enforcement provider is considered to be acting in the
8 performance of his or her duties for the purposes of this act when he or she is participating in any
9 role of a fire, EMS, or law-enforcement department function. This includes training, administration
10 meetings, fire, EMS, or law-enforcement incidents, service calls, apparatus, equipment or station
11 maintenance, fundraisers, and travel to or from such functions.

12 (d) Travel includes riding upon or in any apparatus or vehicle which is owned or used by
13 the fire, EMS, or law-enforcement department, or any other vehicle going to or directly returning

14 from a firefighter's home, place of business, or other place where he or she shall have been prior
15 to participating in a fire, EMS, or law-enforcement department function, or upon the authorization
16 of the chief of the department, agency head, or other person in charge.

17 (e) Certification shall include the name of the certified fire, EMS or law-enforcement
18 program, the name of the deceased firefighter, EMS or law-enforcement provider, the name and
19 address of the beneficiary, any documentation designating a beneficiary or beneficiaries, and
20 setting forth the circumstances that qualify the deceased individual for death benefits under this
21 act. Upon receipt of the certification from the certified fire, EMS, or law-enforcement program, the
22 state shall, from moneys from the State Treasury, General Fund, pay to the certified fire, EMS, or
23 law-enforcement program the sum of ~~\$50,000~~ \$100,000 in the name of the beneficiary of the
24 death benefit. Within five days of receipt of this sum from the state, the fire, EMS, or law-
25 enforcement program certified by the state shall pay the sum as a benefit to the surviving spouse
26 or designated beneficiary. If there is no surviving spouse or designated beneficiary, then to the
27 minor children of the firefighter, EMS, or law-enforcement provider ~~killed~~ who died in the
28 performance of duty. When no spouse, designated beneficiary, or minor children survive, the
29 benefit shall be paid to the parent or parents of the firefighter, EMS, or law-enforcement provider.
30 It is the responsibility of the certified fire or EMS program to document the surviving spouse or
31 beneficiary for purposes of reporting to the Governor's Office.

32 (f) Any death ruled by a physician to be a result of an injury sustained during any of the
33 above mentioned performance of fire department, EMS, or law-enforcement duties will be eligible
34 for this benefit, even if this death occurs at a later time.

35 (g) Those individuals who are covered by this article are eligible for only one death benefit
36 payment.

37 (h) Every department or agency head employing persons to which this article applies shall
38 provide notice of the benefit provided hereby to such employees and encourage covered
39 employees to provide a written designation of beneficiary to be maintained in the employee's

40 personnel file.

41 (i) Any person making application for certification as a firefighter to which this this section
42 applies shall provide a written designation of beneficiary using forms and procedures prescribed
43 by the State Fire Marshal. Any person making application for emergency medical services
44 personnel certification to which this section applies shall provide a written designation of
45 beneficiary using forms and procedures prescribed by the Commissioner of the Bureau for Public
46 Health.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3d. Levy for, establishment and operation of fire prevention units; financial aid.

1 (a) The county commission in any county may:

2 (1) ~~levy~~ Levy for and ~~may~~ erect, maintain and operate fire stations; and

3 (2) Form county fire prevention units, and supply equipment therefor in the county:

4 *Provided, That if a county commission establishes a separate county fire ~~protection~~ prevention*
5 *unit in any city in West Virginia that is now operating under the provisions of the state civil service*
6 *act for paid fire departments, then the new unit shall be operated in accordance with the provisions*
7 *of the civil service act. Any such unit shall be formed and recognized under the regulations of the*
8 *state fire commission for local fire departments.*

9 (b) Any county commission may render financial aid to any one or more public fire
10 protection facilities in operation in the county for the general benefit of the public in the prevention
11 of fires.

12 (c) Any county commission may also authorize volunteer fire companies or paid fire
13 departments to charge reasonable reimbursement fees for personnel and equipment used in
14 performing firefighting services, victim rescue, or cleanup of debris or hazardous materials by
15 department personnel.

16 (1) The rate for any such fees to be charged to property owners or other persons
17 responsible or liable for payment for such services must be approved by the county commission
18 and must be reasonable: *Provided, however,* That no fee for any single incident or accident shall
19 exceed ~~\$500~~ \$1,500, except that the fee for an incident or accident involving hazardous materials
20 may exceed this amount based on the necessary and reasonable costs incurred.

21 (2) The county commission shall require that any fees charged pursuant to the authority
22 conferred by this section must be in writing and be itemized by specific services rendered and the
23 rate for each service.

24 (3) Unless exempt by law, any person, partnership, corporation, or governmental agency
25 shall be fully responsible for all charges levied by this section within 30 days of the date of the
26 response resulting in such charge. Payment to the fire department or company rendering the
27 services shall be in full, unless a written agreement has been reached between the fire department
28 or company and the responsible party to establish a payment schedule to satisfy all charges.

29 (4) If payment for services rendered has not been received within 90 days from the date
30 of response, and if a payment schedule has not been established, a fire department or company
31 may proceed in magistrate court or in other appropriate court action to recover from the
32 responsible party all fees associated with the response, including attorney fees and court costs.

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-25. Volunteer first responder credit.

1 (a) As used in this section:

2 (1) "First responder organization" means a volunteer fire company or fire department, or
3 a rescue squad or emergency medical services agency.

4 (2) "Volunteer first responder" is an individual who contributes time and energy to a first
5 responder organization without compensation or for a per-call stipend.

6 (3) "Activities" include responding to a call for service to the first responder organization
7 generated from the public safety answering point or emergency telecommunications center, and
8 training sessions in a calendar year. "Activities" does not include fundraising activities or any other
9 activity not directly related to responding to a call or training for responding to calls. For the
10 purpose of determining training session participation, a volunteer first responder successfully
11 completing training occurring outside the first responder organization shall receive an activity
12 credit for each two hours of training received.

13 (b) A credit is allowed against an individual's personal income tax liability under this article
14 for involvement in:

15 (1) At least 55 of the first responder organization's activities, of \$1,000;

16 (2) Less than 55 and at least 45 of the fire company's or emergency medical services'
17 activities of \$800;

18 (3) Less than 45 and at least 35 of the fire company's or emergency medical services'
19 activities of \$600;

20 (4) Less than 35 and at least 25 of the fire company's or emergency medical services'
21 activities of \$400; and

22 (5) Less than 25 and at least 15 of the fire company's or emergency medical services'
23 activities of \$200.

24 (c) Certification of the level of activity participation shall be by sworn statement by the chief
25 officer of the first responder organization and witnessed by a notary public.

26 (d) The tax credit under this section is not refundable, but excess credits may be carried
27 forward for not more than 10 years for consideration on future tax returns.

28 (e) The Tax Commissioner shall develop forms for use by the first responder
29 organization's chief officer documenting total number of calls by and the number of training
30 activities conducted in the department, the number of calls responded to by the volunteer, the
31 number of training activity credits earned by the volunteer, and the ratio of cumulative number of

32 calls responded to and training activities by the volunteer to the cumulative total number of calls
33 for service by the department and training activities conducted within the department during the
34 calendar year.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-6. Powers and duties of commissioner.

1 The commissioner has the following powers and duties:

2 (a) To propose rules for legislative approval in accordance with the provisions of §29A-3-
3 1 et seq. of this code: *Provided*, That the rules have been submitted at least thirty days in advance
4 for review by the Emergency Medical Services Advisory Council, who may act only in the
5 presence of a quorum. The rules may include:

6 (1) Standards and requirements for certification and recertification of emergency medical
7 service personnel, including, but not limited to:

8 (A) Age, training, testing, and continuing education;

9 (B) Procedures for certification and recertification, and for denying, suspending, revoking,
10 reinstating and limiting a certification or recertification;

11 (C) Levels of certification and the scopes of practice for each level;

12 (D) Standards of conduct; and

13 (E) Causes for disciplinary action and sanctions which may be imposed.

14 (2) Standards and requirements for licensure and licensure renewals of emergency
15 medical service agencies, including:

16 (A) Operational standards, levels of service, personnel qualifications and training,
17 communications, public access, records management, reporting requirements, medical direction,
18 quality assurance and review, and other requirements necessary for safe and efficient operation;

19 (B) Inspection standards and establishment of improvement periods to ensure

20 maintenance of the standards;

21 (C) Fee schedules for licensure, renewal of licensure, and other necessary costs;

22 (D) Procedures for denying, suspending, revoking, reinstating, or limiting an agency
23 licensure;

24 (E) Causes for disciplinary action against agencies; and

25 (F) Administrative penalties, fines, and other disciplinary sanctions which may be imposed
26 on agencies;

27 (3) Standards and requirements for emergency medical service vehicles, including
28 classifications and specifications;

29 (4) Standards and requirements for training institutions, including approval or accreditation
30 of sponsors of continuing education, course curricula, and personnel;

31 (5) Standards and requirements for a State Medical Direction System, including
32 qualifications for a state emergency medical services medical director and regional medical
33 directors, the establishment of a State Medical Policy and Care Committee, and the designation
34 of regional medical command centers;

35 (6) Provision of services by emergency medical services personnel in hospital emergency
36 rooms;

37 (7) Authorization to temporarily suspend the certification of an individual emergency
38 medical service provider prior to a hearing or notice if the commissioner finds there is probable
39 cause that the conduct or continued service or practice of any individual certificate holder has or
40 may create a danger to public health or safety: *Provided*, That the commissioner may rely on
41 information received from a physician that serves as a medical director in finding that probable
42 cause exists to temporarily suspend the certification; and

43 (8) Any other rules necessary to carry out the provisions of this article.

44 (b) To apply for, receive, and expend advances, grants, contributions, and other forms of
45 assistance from the state or federal government or from any private or public agencies or

46 foundations to carry out the provisions of this article.

47 (c) To design, develop and review a Statewide Emergency Medical Services
48 Implementation Plan. The plan shall recommend aid and assistance and all other acts necessary
49 to carry out the purposes of this article:

50 (1) To encourage local participation by area, county and community officials, and regional
51 emergency medical services boards of directors; and

52 (2) To develop a system for monitoring and evaluating emergency medical services
53 programs throughout the state.

54 (d) To provide professional and technical assistance and to make information available to
55 regional emergency medical services boards of directors and other potential applicants or
56 program sponsors of emergency medical services for purposes of developing and maintaining a
57 statewide system of services.

58 (e) To assist local government agencies, regional emergency medical services boards of
59 directors, and other public or private entities in obtaining federal, state or other available funds
60 and services.

61 (f) To cooperate and work with federal, state and local governmental agencies, private
62 organizations and other entities as may be necessary to carry out the purposes of this article.

63 (g) To acquire in the name of the state by grant, purchase, gift, devise or any other
64 methods appropriate real and personal property as may be reasonable and necessary to carry
65 out the purposes of this article.

66 (h) To make grants and allocations of funds and property so acquired or which may have
67 been appropriated to the agency to other agencies of state and local government as may be
68 appropriate to carry out the purposes of this article.

69 (i) To expend and distribute by grant or bailment funds and property to all state and local
70 agencies for the purpose of performing the duties and responsibilities of the agency all funds
71 which it may have so acquired or which may have been appropriated by the Legislature of this

72 state.

73 (j) To develop a program to inform the public concerning emergency medical services.

74 (k) To review and disseminate information regarding federal grant assistance relating to
75 emergency medical services.

76 (l) To prepare and submit to the Governor and Legislature recommendations for legislation
77 in the area of emergency medical services.

78 (m) To review, make recommendations for, and assist in all projects and programs that
79 provide for emergency medical services whether or not the projects or programs are funded
80 through the Office of Emergency Medical Services. A review and approval shall be required for
81 all emergency medical services projects, programs, or services for which application is made to
82 receive state or federal funds for their operation after the effective date of this act; and

83 (n) To cooperate with the Department of Administration, Purchasing Division to establish
84 one or more statewide contracts for equipment and supplies utilized by emergency medical
85 services agencies in accordance with §5A-3-1 et seq. of this code.

86 (1) Any statewide contract established hereunder shall be made available to any
87 emergency medical services agency licensed under §16-4C-6a of this code that is designated to
88 provide emergency response by one or more county emergency dispatch centers.

89 (2) The office may develop uniform standards for equipment and supplies used by
90 emergency medical services agencies in accordance with §5A-3-1 et seq. of this code.

91 (3) The office shall propose legislative rules for promulgation in accordance with §29A-3-
92 1 et seq. of this code to effectuate the provisions of this subsection; and

93 ~~(n)~~ (o) To take all necessary and appropriate action to encourage and foster the
94 cooperation of all emergency medical service providers and facilities within this state.

§16-4C-8. Standards for emergency medical service personnel.

1 (a) Every ambulance operated by an emergency medical service agency shall carry at
2 least two personnel. At least one person shall be certified in cardiopulmonary resuscitation or first

3 aid and the person in the patient compartment shall be certified as an emergency medical
4 technician-basic at a minimum except that in the case of a specialized multipatient medical
5 transport, only one staff person is required and that person shall be certified, at a minimum, at the
6 level of an emergency medical technician-basic. The requirements of this subsection will remain
7 in effect until revised by the legislative rule to be promulgated pursuant to §16-4C-8(b) of this
8 code.

9 (b) On or before May 28, 2010, the commissioner shall submit a proposed legislative rule
10 to the Emergency Medical Services Advisory Council for review, and on or before June 30, 2010,
11 shall file the proposed legislative rule with the office of the Secretary of State, in accordance with
12 the provisions of §29A-3-1 *et seq.* of this code, to establish certification standards for emergency
13 medical vehicle operators and to revise the requirements for emergency medical service
14 personnel.

15 (c) As of the effective date of the legislative rule to be promulgated pursuant to §16-4C-
16 8(b), emergency medical service personnel who operate ambulances shall meet the requirements
17 set forth in the legislative rule.

18 (d) Any person desiring emergency medical service personnel certification shall apply to
19 the commissioner using forms and procedures prescribed by the commissioner. Upon receipt of
20 the application, the commissioner shall determine whether the applicant meets the certification
21 requirements and may examine the applicant if necessary to make that determination.

22 (e) The applicant shall submit to a national criminal background check, the requirement of
23 which is declared to be not against public policy.

24 (1) The applicant shall meet all requirements necessary to accomplish the national
25 criminal background check, including submitting fingerprints, and authorizing the West Virginia
26 Office of Emergency Medical Services, the West Virginia State Police and the Federal Bureau of
27 Investigation to use all records submitted and produced for the purpose of screening the applicant
28 for certification.

29 (2) The results of the national criminal background check may not be released to or by a
30 private entity.

31 (3) The applicant shall submit a fee of \$75 for initial certification and a fee of \$50 for
32 recertification. The fees set forth in this subsection remain in effect until modified by legislative
33 rule.

34 (f) An application for an original, renewal, or temporary emergency medical service
35 personnel certificate or emergency medical services agency license, shall be acted upon by the
36 commissioner and the certificate or license delivered or mailed, or a copy of any order of the
37 commissioner denying any such application delivered or mailed to the applicant, within 15 days
38 after the date upon which the complete application including test scores and background checks,
39 if applicable, was received by the commissioner.

40 (g) Any person may report to the commissioner or the Director of the Office of Emergency
41 Medical Services information he or she may have that appears to show that a person certified by
42 the commissioner may have violated the provisions of this article or legislative rules promulgated
43 pursuant to this article. A person who is certified by the commissioner, who knows of or observes
44 another person certified by the commissioner violating the provisions of this article or legislative
45 rules promulgated pursuant to this article, has a duty to report the violation to the commissioner
46 or director. Any person who reports or provides information in good faith is immune from civil
47 liability.

48 (h) The commissioner may issue a temporary emergency medical service personnel
49 certificate to an applicant, with or without examination of the applicant, when he or she finds that
50 issuance to be in the public interest. Unless suspended or revoked, a temporary certificate shall
51 be valid initially for a period not exceeding 120 and may not be renewed unless the commissioner
52 finds the renewal to be in the public interest.

53 (i) For purposes of certification or recertification of emergency medical services personnel,
54 the commissioner shall recognize and give full credit for all continuing education credits that have

55 been approved or recognized by any state or nationally recognized accrediting body.

§16-4C-24. Emergency medical services equipment and training fund; establishment of grant program for equipment and training of emergency medical service providers and personnel.

1 (a) There is hereby created in the State Treasury a special revenue fund to be known as
2 the Emergency Medical Services Equipment and Training Fund. Expenditures from the fund by
3 the Office of Emergency Medical Services, Bureau for Public Health, Department of Health and
4 Human Resources are authorized from collections. The fund may only be used for the purpose
5 of providing grants to equip emergency medical service providers and train emergency medical
6 service personnel, as defined in §16-4C-3 of this code. Any balance remaining in the fund at the
7 end of any fiscal year does not revert to the General Revenue Fund but remains in the special
8 revenue fund.

9 (b) The Commissioner of the Bureau for Public Health shall establish a grant program for
10 equipment and training of emergency medical service providers and personnel. Such grant
11 program shall be open to all emergency medical services personnel and providers, but priority
12 shall be given to rural and volunteer emergency medical service providers.

13 (c) The Commissioner of the Bureau for Public Health shall propose legislative rules for
14 promulgation in accordance with §29A-3-1 et seq. of this code to implement the grant program
15 established pursuant to this section.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-8d. Reimbursement for volunteer fire departments.

1 (a) In addition to the other powers given and assigned to him or her in this chapter, the
2 Commissioner of the Division of Highways may enter into reimbursement agreements, based
3 upon actual costs incurred, with volunteer or part-volunteer fire departments for services provided

4 by volunteer fire departments relating to tree or debris removal from state highways and rights of
5 way when the commissioner requests such services.

6 (b) The commissioner of highways may propose rules for legislative approval in
7 accordance with the provisions of §29A-3-1 et seq. of this code to effectuate the purposes of the
8 section. Any rule promulgated pursuant to this section shall include provisions establishing
9 minimum reporting, auditing, and other necessary documentation requirements to approve
10 reimbursement requests submitted to the commissioner.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-12. Powers and duties of State Fire Marshal.

1 (a) *Enforcement of laws.* — The State Fire Marshal and any other person authorized to
2 enforce the provisions of this article under the supervision and direction of the State Fire Marshal
3 has the authority to enforce all laws of the state having to do with:

4 (1) Prevention of fire;

5 (2) The storage, sale, and use of any explosive, combustible or other dangerous article or
6 articles in solid, flammable liquid, or gas form;

7 (3) The installation and maintenance of equipment of all sorts intended to extinguish,
8 detect, and control fires;

9 (4) The means and adequacy of exit, in case of fire, from buildings and all other places in
10 which persons work, live, or congregate, from time to time, for any purpose, except buildings used
11 wholly as dwelling houses for no more than two families;

12 (5) The suppression of arson; and

13 (6) Any other thing necessary to carry into effect the provisions of this article including, but
14 not limited to, confiscating any materials, chemicals, items, or personal property owned,
15 possessed, or used in direct violation of the State Fire Code.

16 (b) *Assistance upon request.* — Upon request, the State Fire Marshal shall assist any
17 chief of any recognized fire company or department. Upon the request of any federal law-
18 enforcement officer, state police officer, natural resources police officer, or any county or
19 municipal law-enforcement officer, the State Fire Marshal, any deputy state fire marshal, or
20 assistant state fire marshal employed pursuant to §29-3-11 of this code and any person deputized
21 pursuant to §29-3-12(j) of this code may assist in the lawful execution of the requesting officer's
22 official duties: *Provided*, That the State Fire Marshal, or other person authorized to act under this
23 subsection shall at all times work under the direct supervision of the requesting officer.

24 (c) *Enforcement of rules.* — The State Fire Marshal shall enforce the rules promulgated
25 by the State Fire Commission as authorized by this article.

26 (d) *Inspections generally.* — The State Fire Marshal shall inspect all structures and
27 facilities, other than one- and two-family dwelling houses, subject to the State Fire Code and this
28 article, including, but not limited to, state, county, and municipally owned institutions, all public
29 and private schools, health care facilities, theaters, churches, and other places of public assembly
30 to determine whether the structures or facilities are in compliance with the State Fire Code.

31 (e) *Right of entry.* — The State Fire Marshal may, at all reasonable hours, enter any
32 building or premises, other than dwelling houses, for the purpose of making an inspection which
33 he or she may consider necessary under the provisions of this article. The State Fire Marshal and
34 any deputy state fire marshal or assistant state fire marshal approved by the State Fire Marshal
35 may enter upon any property, or enter any building, structure or premises, including dwelling
36 houses during construction and prior to occupancy, for the purpose of ascertaining compliance
37 with the conditions set forth in any permit or license issued by the office of the State Fire Marshal
38 pursuant to §29-3-12b(A)(1) of this code or of §29-3B-1 *et seq.* of this code.

39 (f) *Investigations.* — The State Fire Marshal may, at any time, investigate as to the origin
40 or circumstances of any fire or explosion or attempt to cause fire or explosion occurring in the
41 state. The State Fire Marshal has the authority at all times of the day or night, in performance of

42 the duties imposed by the provisions of this article, to investigate where any fires or explosions or
43 attempt to cause fires or explosions may have occurred, or which at the time may be burning.
44 Notwithstanding the above provisions of this subsection, prior to entering any building or premises
45 for the purposes of the investigation, the State Fire Marshal shall obtain a proper search warrant:
46 *Provided*, That a search warrant is not necessary where there is permissive waiver or the State
47 Fire Marshal is an invitee of the individual having legal custody and control of the property, building
48 or premises to be searched.

49 (g) *Testimony*. — The State Fire Marshal, in making an inspection or investigation when
50 in his or her judgment the proceedings are necessary, may take the statements or testimony
51 under oath of all persons who may be cognizant of any facts or have any knowledge about the
52 matter to be examined and inquired into and may have the statements or testimony reduced to
53 writing; and shall transmit a copy of the statements or testimony so taken to the prosecuting
54 attorney for the county wherein the fire or explosion or attempt to cause a fire or explosion
55 occurred. Notwithstanding the above, no person may be compelled to testify or give any statement
56 under this subsection.

57 (h) *Arrests; warrants*. — The State Fire Marshal, any full-time deputy fire marshal or any
58 full-time assistant fire marshal employed by the State Fire Marshal pursuant to §29-3-11 of this
59 code is hereby authorized and empowered and any person deputized pursuant to §29-3-11 of
60 this code may be authorized and empowered by the State Fire Marshal:

61 (1) To arrest any person anywhere within the confines of the State of West Virginia, or
62 have him or her arrested, for any violation of the arson-related offenses of §61-3-1 *et seq.* of this
63 code or of the explosives-related offenses of §61-3e-1 *et seq.* of said code: *Provided*, That any
64 and all persons so arrested shall be forthwith brought before the magistrate or circuit court.

65 (2) To make complaint in writing before any court or officer having jurisdiction and obtain,
66 serve and execute an arrest warrant when knowing or having reason to believe that anyone has
67 committed an offense under any provision of this article, of the arson-related offenses of §61-3-1

68 *et seq.* of this code or of the explosives-related offenses of §61-3e-1 *et seq.* of said chapter.
69 Proper return shall be made on all arrest warrants before the tribunal having jurisdiction over the
70 violation.

71 (3) To make complaint in writing before any court or officer having jurisdiction and obtain,
72 serve, and execute a warrant for the search of any premises that may possess evidence or
73 unlawful contraband relating to violations of this article, of the arson-related offenses of §61-3-1
74 *et seq.* of this code or of the explosives-related offenses of §61-3e-1 *et seq.* of said code. Proper
75 return shall be made on all search warrants before the tribunal having jurisdiction over the
76 violation.

77 (i) *Witnesses and oaths.* — The State Fire Marshal is empowered and authorized to issue
78 subpoenas and subpoenas duces tecum to compel the attendance of persons before him or her
79 to testify in relation to any matter which is, by the provision of this article, a subject of inquiry and
80 investigation by the State Fire Marshal and cause to be produced before him or her such papers
81 as he or she may require in making the examination. The State Fire Marshal is hereby authorized
82 to administer oaths and affirmations to persons appearing as witnesses before him or her. False
83 swearing in any matter or proceeding aforesaid is considered perjury and is punishable as perjury.

84 (j) *Deputizing members of fire departments in this state.* — The State Fire Marshal may
85 deputize a member of any fire department, duly organized and operating in this state, who is
86 approved by the chief of his or her department and who is properly qualified to act as his or her
87 assistant for the purpose of making inspections with the consent of the property owner or the
88 person in control of the property and the investigations as may be directed by the State Fire
89 Marshal, and the carrying out of orders as may be prescribed by him or her, to enforce and make
90 effective the provisions of this article and any and all rules promulgated by the State Fire
91 Commission under authority of this article: *Provided,* That in the case of a volunteer fire
92 department, only the chief thereof or his or her single designated assistant may be so deputized.

93 (k) *Written report of examinations.* — The State Fire Marshal shall, at the request of the
94 county commission of any county or the municipal authorities of any incorporated municipality in
95 this state, make to them a written report of the examination made by him or her regarding any fire
96 happening within their respective jurisdictions.

97 (l) *Report of losses by insurance companies.* — It is the duty of each fire insurance
98 company or association doing business in this state, within 10 days after the adjustment of any
99 loss sustained by it that exceeds \$1,500, to report to the State Fire Marshal information regarding
100 the amount of insurance, the value of the property insured, and the amount of claim as adjusted.
101 This report is in addition to any information required by the State Insurance Commissioner. Upon
102 the request of the owner or insurer of any property destroyed or injured by fire or explosion, or in
103 which an attempt to cause a fire or explosion may have occurred, the State Fire Marshal shall
104 report in writing to the owner or insurer the result of the examination regarding the property.

105 (m) *Issuance of permits and licenses.* — The State Fire Marshal is authorized to issue
106 permits, documents, and licenses in accordance with the provisions of this article or §29-3B-1 et
107 seq. of this chapter: *Provided,* That unless otherwise provided, the State Fire Marshall shall take
108 final action upon any completed permit applications within 30 days of receipt if the application is
109 uncontested, or within 90 days if the application is contested. The State Fire Marshal may require
110 any person who applies for a permit to use explosives, other than an applicant for a license to be
111 a pyrotechnic operator under §29-3-24 of this code, to be fingerprinted and to authorize the State
112 Fire Marshal to conduct a criminal records check through the criminal identification bureau of the
113 West Virginia State Police and a national criminal history check through the Federal Bureau of
114 Investigation. The results of any criminal records or criminal history check shall be sent to the
115 State Fire Marshal.

116 (n) *Issuance of citations for fire and life safety violations.* — The State Fire Marshal, any
117 deputy fire marshal, and any assistant fire marshal employed pursuant to §29-3-11 of this code
118 are hereby authorized, and any person deputized pursuant to §29-3-12(j) of this code may be

119 authorized by the State Fire Marshal to issue citations, in his or her jurisdiction, for fire and life
120 safety violations of the State Fire Code and as provided for by the rules promulgated by the State
121 Fire Commission in accordance with article three, chapter twenty-nine-a of this code: *Provided,*
122 That a summary report of all citations issued pursuant to this section by persons deputized under
123 §29-3-12(j) of this code shall be forwarded monthly to the State Fire Marshal in the form and
124 containing information as he or she may by rule require, including the violation for which the
125 citation was issued, the date of issuance, the name of the person issuing the citation and the
126 person to whom the citation was issued. The State Fire Marshal may at any time revoke the
127 authorization of a person deputized pursuant to §29-3-12(j) of this code to issue citations, if in the
128 opinion of the State Fire Marshal, the exercise of authority by the person is inappropriate.

129 Violations for which citations may be issued include, but are not limited to:

- 130 (1) Overcrowding places of public assembly;
- 131 (2) Locked or blocked exits in public areas;
- 132 (3) Failure to abate a fire hazard;
- 133 (4) Blocking of fire lanes or fire department connections; and
- 134 (5) Tampering with, or rendering inoperable except during necessary maintenance or
135 repairs, on-premise firefighting equipment, fire detection equipment, and fire alarm systems.

136 (o) *Required training; liability coverage.* -- No person deputized pursuant to §29-3-12(j) of
137 this code may be authorized to issue a citation unless that person has satisfactorily completed a
138 law-enforcement officer training course designed specifically for fire marshals. The course shall
139 be approved by the Law-enforcement Training Subcommittee of the Governor's Committee on
140 Criminal Justice and Highway Safety and the State Fire Commission. In addition, no person
141 deputized pursuant to §29-3-12(j) of this code may be authorized to issue a citation until evidence
142 of liability coverage of the person has been provided, in the case of a paid municipal fire
143 department, by the municipality wherein the fire department is located, or in the case of a
144 volunteer fire department, by the county commission of the county wherein the fire department is

145 located or by the municipality served by the volunteer fire department and that evidence of liability
146 coverage has been filed with the State Fire Marshal.

147 (p) Statewide contracts. – The State Fire Marshal may cooperate with the Department of
148 Administration, Purchasing Division to establish one or more statewide contracts for equipment
149 and supplies utilized by fire companies and departments in accordance with §5A-3-1 et seq. of
150 this code.

151 (1) Any statewide contract established hereunder shall be made available to any fire
152 company and department in this state, as well as any other state agency or political subdivision
153 that has a need for the equipment or supplies included in those contracts.

154 (2) The State Fire Marshal may develop uniform standards for equipment and supplies
155 used by fire companies and departments in accordance with §5A-3-1 et seq. of this code.

156 (3) The State Fire Commission shall propose legislative rules for promulgation in
157 accordance with §29A-3-1 et seq. of this code to effectuate the provisions of this subsection.

158 ~~(p)~~ (q) Penalties for violations. — Any person who violates any fire and life safety rule of
159 the State Fire Code is guilty of a misdemeanor and, upon conviction thereof, shall be fined not
160 less than \$100 nor more than \$1,000 or confined in jail not more than 90 days, or both fined and
161 confined. Each and every day during which any violation of the provisions of this article continues
162 after knowledge or official notice that same is illegal is a separate offense.

**§29-3-5e. Fire service equipment and training fund; creation of fire service equipment and
training grant.**

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

7 fund. The State Fire Marshal shall propose legislative rules for promulgation in accordance with
8 §29A-3-1 et seq. of this code to implement the grant program established pursuant to this section.

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

13 (1) The number of emergency and non-emergency calls responded to by the department;

14 (2) The activities and responses of the department;

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

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

19 (c) The State Fire Commission shall propose legislative rules for promulgation in
20 accordance with §29A-3-1 et seq. of this code to implement the grant program established
21 pursuant to this section.

§29-3-8. Comprehensive report by State Fire Marshal.

1 (a) On or before July 1, 2019, the State Fire Marshal shall submit a comprehensive report
2 containing a recommended plan for transferring authority and responsibility for providing fire
3 services to the counties. Such report shall include, but not be limited to, recommendations
4 regarding recommended state oversight of such fire services; financial support for fire services, a
5 plan and timeline for transitioning responsibility and oversight to the counties; and county
6 authority, oversight, and accountability of operations, fiscal planning, financial accountability, and
7 risk management planning. The State Fire Marshal shall solicit input from appropriate state
8 agencies, county officials, and other interested parties, which shall provide requested information
9 to the State Fire Marshal to assist in preparation of the report and recommendation.

10 (b) On or before July 1, 2019, the State Fire Marshal shall study and prepare a report

11 regarding reciprocity of firefighter and fire officer certification with other states. Such report shall
12 include recommendations regarding ways to increase availability of reciprocal certification,
13 including any necessary changes to state code or regulation necessary to facilitate additional
14 reciprocity.

CHAPTER 33. INSURANCE.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-33. Surcharge on fire and casualty insurance policies to benefit volunteer and part-volunteer fire departments and emergency medical services; Public Employees Insurance Agency and municipal pension plans; special fund created; allocation of proceeds; effective date.

1 (a)(1) For the purpose of providing additional revenue for volunteer fire departments, part-
2 volunteer fire departments, and emergency medical services providers for operations, equipment,
3 training, and workers' compensation coverage, ~~and certain retired teachers and the teachers~~
4 ~~retirement reserve fund,~~ there is hereby authorized and imposed on and after July 1, ~~1992~~ 2018,
5 on the policyholder of any fire insurance policy or casualty insurance policy issued by any insurer,
6 authorized or unauthorized, or by any risk retention group, a policy surcharge equal to one percent
7 of the taxable premium for each such policy. ~~After June 30, 2005, the surcharge shall be imposed~~
8 ~~as specified in subdivisions (2) and (3) of this subsection.~~ For purposes of this section, casualty
9 insurance may not include insurance on the life of a debtor pursuant to or in connection with a
10 specific loan or other credit transaction or insurance on a debtor to provide indemnity for payments
11 becoming due on a specific loan or other credit transaction while the debtor is disabled as defined
12 in the policy. The policy surcharge may not be subject to premium taxes, agent commissions, or
13 any other assessment against premiums.

14 ~~(2) After June 30, 2005, through December 31, 2005, for the purpose of providing~~
15 ~~additional revenue for volunteer fire departments, part-volunteer fire departments and to provide~~

16 additional revenue to the Public Employees Insurance Agency and municipal pension plans, there
17 is hereby authorized and imposed on and after July 1, 2005, on the policyholder of any fire
18 insurance policy or casualty insurance policy issued by any insurer, authorized or unauthorized,
19 or by any risk retention group, a policy surcharge equal to one percent of the taxable premium for
20 each such policy.

21 ~~(3) After December 31, 2005, for the purpose of providing additional revenue for volunteer~~
22 ~~fire departments and part-volunteer fire departments, there is hereby authorized and imposed on~~
23 ~~the policyholder of any fire insurance policy or casualty insurance policy issued by any insurer,~~
24 ~~authorized or unauthorized, or by any risk retention group, a policy surcharge equal to fifty-five~~
25 ~~one hundredths of one percent of the taxable premium for each such policy.~~

26 ~~(4) For purposes of this section, casualty insurance may not include insurance on the life~~
27 ~~of a debtor pursuant to or in connection with a specific loan or other credit transaction or insurance~~
28 ~~on a debtor to provide indemnity for payments becoming due on a specific loan or other credit~~
29 ~~transaction while the debtor is disabled as defined in the policy. The policy surcharge may not be~~
30 ~~subject to premium taxes, agent commissions or any other assessment against premiums.~~

31 (b) The policy surcharge shall be collected and remitted to the Commissioner by the
32 insurer, or in the case of surplus lines coverage, by the surplus lines licensee, or if the policy is
33 issued by a risk retention group, by the risk retention group. The amount required to be collected
34 under this section shall be remitted to the Commissioner on a quarterly basis on or before the
35 25th day of the month succeeding the end of the quarter in which they are collected, except for
36 the fourth quarter for which the surcharge shall be remitted on or before March 1 of the succeeding
37 year.

38 (c) Any person failing or refusing to collect and remit to the Commissioner any policy
39 surcharge and whose surcharge payments are not postmarked by the due dates for quarterly
40 filing is liable for a civil penalty of up to \$100 for each day of delinquency, to be assessed by the
41 Commissioner. The Commissioner may suspend the insurer, broker, or risk retention group until

42 all surcharge payments and penalties are remitted in full to the Commissioner.

43 (d)(1) All money from the policy surcharge shall be collected by the Commissioner who
44 shall disburse the money received from the surcharge as follows:

45 (1) Fifty-five percent of the moneys received shall be deposited into a special account in
46 the state Treasury, designated the Fire Protection Fund. The net proceeds of this portion of the
47 tax and the interest thereon, after appropriation by the Legislature, shall be distributed quarterly
48 on the first day of the months of January, April, July, and October to each volunteer fire company
49 or department on an equal share basis by the state Treasurer. ~~After June 30, 2005, the money~~
50 ~~received from the surcharge shall be distributed as specified in subdivisions (2) and (3) of this~~
51 ~~subsection.~~

52 ~~(2)(A) After June 30, 2005, through December 31, 2005, all money from the policy~~
53 ~~surcharge shall be collected by the Commissioner who shall disburse one half of the money~~
54 ~~received from the surcharge into the Fire Protection Fund for distribution as provided in~~
55 ~~subdivision (1) of this subsection.~~

56 ~~(B) The remaining portion of moneys collected shall be transferred into the fund in the~~
57 ~~state Treasury of the Public Employees Insurance Agency into which are deposited the~~
58 ~~proportionate shares made by agencies of this state of the Public Employees Insurance Agency~~
59 ~~costs of those agencies, until November 1, 2005. After the October 31, 2005, through December~~
60 ~~31, 2005, the remain portion shall be transferred to the special account in the state Treasury,~~
61 ~~known as the Municipal Pensions and Protection Fund.~~

62 (2) Twenty percent of the moneys received shall be deposited into the Volunteer Fire
63 Department Workers' Compensation Subsidy Program, established pursuant to §12-4-14a of this
64 code.

65 (3) Fifteen percent of the moneys received shall be deposited into the Fire Service
66 Equipment and Training Fund, established pursuant to §29-3-5e of this code.

67 (4) Ten percent of the moneys received shall be deposited into the Emergency Medical

68 Services Equipment and Training Fund, established pursuant to §16-4C-24 of this code.

69 ~~(3) After December 31, 2005, all money from the policy surcharge shall be collected by~~
70 ~~the Commissioner who shall disburse all of the money received from the surcharge into the Fire~~
71 ~~Protection Fund for distribution as provided in subdivision (1) of this subsection.~~

72 (5) Before each distribution date to volunteer fire companies or departments, the state Fire
73 Marshal shall report to the state Treasurer the names and addresses of all volunteer and part-
74 volunteer fire companies and departments within the state which meet the eligibility requirements
75 established in §8-15-8a of this code.

76 (e) The allocation, distribution and use of revenues provided in the Fire Protection Fund
77 are subject to the provisions of §8-15-8a and, §8-15-8b of this code.

§33-3-33b. Report regarding volunteer firefighter workers' compensation coverage.

1 (a) The Insurance Commissioner, in consultation with the State Fire Marshal, the State
2 Auditor, the Legislative Auditor, and the Board of Risk and Insurance Management, shall study
3 the feasibility of combining the volunteer fire departments in our state under a single policy for
4 workers' compensation coverage, self-insuring workers' compensation coverage for volunteer fire
5 departments, or other workers' compensation coverage options. Such study shall also include an
6 evaluation of the benefit, necessity and feasibility of expanding the current scope of workers'
7 compensation coverage for volunteers, including but not limited to, including presumptions for
8 cardiovascular or pulmonary disease, occupational pneumoconiosis, or other occupational
9 disease, as well as a comparison of those proposals to other means of supplementing workers'
10 compensation insurance through secondary insurance policies.

11 (b) On or before July 1, 2019, the Insurance Commissioner shall submit to the Joint
12 Committee on Government Organization a comprehensive report of the review and the Insurance
13 Commissioner's recommendations, substantiated by the findings of the review, and steps that
14 may be taken to meet the needs of and sustain the volunteer fire departments for their workers'
15 compensation coverage.

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