Committee Substitute

for

House Bill 4485

BY DELEGATES HANSHAW (MR. SPEAKER) AND MILEY

(BY REQUEST OF THE EXECUTIVE)

[Introduced January 23, 2020; Referred to the Committee on Veterans’ Affairs and Homeland Security then the Judiciary.]
A BILL to repeal §15-5-4, §15-5-27, §29-3-1, §29-3-2, §29-3-3, §29-3-4, §29-3-5, §29-3-5a, §29-
3-5b, §29-3-5c, §29-3-5d, §29-3-5e, §29-3-5f, §29-3-6, §29-3-7, §29-3-8, §29-3-9, §29-3-
10, §29-3-11, §29-3-12, §29-3-12a, §29-3-12b, §29-3-13, §29-3-14, §29-3-15, §29-3-16,
§29-3-16a, §29-3-16b, §29-3-16c, §29-3-16d, §29-3-17, §29-3-18, §29-3-19, §29-3-21,
§29-3-22, §29-3-27, §29-3-28, §29-3-29, §29-3-30, and §29-3-32 of the Code of West
Virginia 1931, as amended; to amend and reenact §5F-1-2 of the Code of West Virginia,
1931, as amended; to amend and reenact §5F-2-1 and §5F-2-2 of said code; to amend
and reenact §15-1A-3 of said code; to amend and reenact §15-5-3, §15-5-4b, §15-5-4c,
§15-5-13, §15-5-20a, §15-5-24 and §15-5-26 of said code; to amend said code by adding
thereto a new section, designated as §15-5-29; to amend and reenact §15A-1-2 and
§15A-1-3 of said code; to amend said code by adding thereto a new section, designated
as §15A-1-9; to amend said code, by adding thereto a new article, designated §15A-9-1,
by adding thereto a new article, designated §15A-10-1, §15A-10-2, §15A-10-3, §15A-10-
4, §15A-10-5, §15A-10-6, §15A-10-7, §15A-10-8, §15A-10-9, §15A-10-10, §15A-10-11,
§15A-10-12, §15A-10-13, §15A-10-14, §15A-10-15, §15A-10-16, §15A-10-17, §15A-10-
§15A-10-25; to amend said code by adding thereto a new article, designated §15A-11-1,
11-9, §15A-11-10, and §15A-11-11; to amend and reenact §19-1-4 of said code; to amend
and reenact §19-21A-4 of said code; to amend and reenact §20-1-7 of said code; to amend
and reenact §22-1-6 of said code; to amend and reenact §29-31-2, §29-31-3, and §29-31-
4 of said code; to amend said code by adding thereto a new section, designated §29-31-
5; and to amend said code by adding thereto a new section, designated §33-2-23; all
relating to reorganizing and redesignating the Department of Military Affairs and Public
Safety as the Department of Homeland Security; clarifying the divisions that report to the
cabinet secretary of that Department, removing the Adjutant General’s Office, State Armory Board, and Military Awards Board from the Department of Military Affairs and Public Safety; clarifying the agencies established within the Department of Military Affairs and Public Safety; delineating that the secretary of each state Department cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties; requiring that the Adjutant General cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties; designating the Department of Homeland Security as the State Administrative Agency for homeland security and emergency management grants; designating the Division of Homeland Security and Emergency Management as the Division of Emergency Management; making the employees of the Division of Emergency Management classified exempt employees; terminating the West Virginia Disaster Recovery Board; providing that the State Resiliency Officer have the authority to disburse funds from the Disaster Recovery Trust Fund; granting powers necessary to accomplish such disbursement to the State Resiliency Officer; providing for appropriations and other funding sources to the Disaster Recovery Trust Fund; deleting requirements for government entities with sufficiently trained floodplain managers to transfer their floodplain oversight to another governmental entity; amending provisions regarding administration of the Disaster Recovery Trust Fund; providing the State Resiliency Officer need not pay taxes for moneys deposited in the Disaster Recovery Trust Fund or other assets of such Fund; repealing the provision for an annual report of the abolished Disaster Recovery Board; providing the Director of the Division of Emergency Management shall cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties; establishing the powers and duties of the Secretary of Homeland Security; establishing the Office of Administrative Hearings within the Department of Military Affairs and Public Safety; authorizing the appointment of a Chief Hearing Examiner, establishing the organization of
the Office of the Chief Hearing Examiner; establishing the jurisdiction of the office of administrative hearings; establishing hearing procedures; establishing rule-making authority; establishing a duty to provide notice of change of address; establishing policies for the transition from divisions of the department of homeland security to the office of administrative hearings; separating the Fire Marshal from the Fire Commission; transferring the Fire Marshal from the State Fire Commission to the Department of Homeland Security; setting forth the appointment process for the Fire Marshal, setting forth qualifications, salary, and responsibilities of the State Fire Marshal; allowing the Fire Marshal to hire employees; allowing the Fire Marshal to hire a Deputy, and setting the qualifications of the Deputy; requiring new Fire Marshals 1, 2, 3, and Deputies to become certified law-enforcement officers; setting forth powers and duties of the State Fire Marshal; setting forth additional powers and duties relating to law enforcement, statewide contracts, penalties, and authority to carry firearms; creating enforcement standards for the state building and fire codes; creating rule-making authority; allowing the appointment of advisory boards; setting forth the responsibilities of insurance companies in fire loss investigations; allowing the Fire Marshal to set fees; requiring an annual report; setting forth maintenance of fire hazard standards; allowing orders for repair or demolition; allowing orders to contain notice to comply and a right to appeal; providing standards for service of repair or demolition orders; clarifying who is responsible for cost of work or demolition; allowing an action to recover cost; requiring smoke detectors in one and two family dwellings; requiring carbon monoxide detectors in residential units, schools, and day care facilities and setting forth penalties; allowing the use of live trees in public buildings under certain circumstances; setting forth safety standards for bed and breakfast establishments; setting forth standards for installation of propane gas systems; setting forth parameters to abate fire hazards; setting forth license denial, limitation, suspension and revocation standards; creating an independent informal dispute process for licensees
upon appeal; establishing demonstration building and equipment standards for educational instruction for fire protection and prevention and abatement; creating crime of false alarm of fires and setting forth penalties; creating tax on insurance companies; setting forth general criminal penalties for violation; setting forth that the parts of the article are construed liberally; creating a severability section; allowing the Fire Marshal to award service weapons to retiring employees under certain conditions; allowing the Fire Marshal to dispose of unused firearms; continuing the Fire Commission, setting forth composition, qualifications, appointment, terms of office, removal, vacancies, and compensation and expenses; establishing chairperson, vice chairperson, meeting and quorum requirements; creating rule making authority for fire code, building code, and general rule making authority; continuing the hazardous response training program; requiring public hearing and notice prior to promulgation of fire code; setting forth commission’s powers and conduct of public hearing; setting forth commission’s powers duties and authority; setting forth authority over volunteer fire department training, and equipment, and creating rule-making authority for such; continuing courtesy certification of firefighters in surrounding states to serve as volunteer firefighters; continuing the Fire Service Equipment and Training Fund; providing the Commissioner of Agriculture shall cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties; providing the State Conservation Committee shall cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties; providing the Director of the Division of Natural Resources shall cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties; providing the Secretary of the Department of Environmental Protection shall cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties; repealing generally now-obsolete provisions relating to the Fire Commission and State Fire Marshal; placing the State Resiliency office under the Office of the Governor;
adding the President of the West Virginia Emergency Management Council, the Secretary
of the Department of Homeland Security, Director of the Division of Emergency
Management on the State Resiliency Office Board; adding two non-voting member
legislators from each house of the Legislature to the State Resiliency Office Board;
specifying tenure of office on that board; providing that members of the board serve
without compensation, but may collect necessary expenses; providing certain mandatory
duties for that Board; providing the State Resiliency Officer shall be appointed by the
Governor with the advice and consent of the Senate, and setting the duties and
qualifications for such officer; providing for the employment of a deputy to the State
Resiliency Officer shall be appointed by the Governor with the advice and consent of the
Senate, upon presentation from a list of names by the State Resiliency Office Board, and,
setting the duties and qualifications for such officer; providing that the State Resiliency
officer and his or her deputy must have complimentary work experience; specifying the
areas in which the State Resiliency Office Board shall be required to assist the State
Resiliency Officer to fulfill the missions of that office, and specifying the areas where that
body shall assist the State Resiliency Officer to devise plans and develop procedures;
providing for certain exemptions from the Public Meetings Act and Freedom of Information
Act for meetings of and materials presented to the Board; delineating the authority of the
State Resiliency Office and the State Resiliency Officer in carrying out their missions;
providing the State Resiliency Officer shall report at least quarterly to the Joint Legislative
Committee on Flooding; granting the State Resiliency Officer authority to hire employees
for the office; providing that such employees are at-will, may participate in state insurance
and other programs, and, if entrusted with state funds, shall execute surety bonds;
providing that the State Resiliency Officer shall set employee salary rates; creating the
state Office of the National Flood Insurance Program in the Office of the Insurance
Commissioner; requiring a coordinator to administer such program; providing that state
owned property in any non-participating community shall be governed by appropriate rules promulgated by the Insurance Commissioner; requiring the coordinator and floodplain managers to develop a strategic plan to meet goals and objectives, which plan shall be reviewed by and must be approved by the State Resiliency Officer and State Resiliency Office Board; requiring the coordinator to establish and enforce flood plain management regulations in special hazard areas which are in conformity with Federal laws and regulations; and which are in conformity with Federal laws and regulations; and providing the coordinator of the state office of the National Flood Insurance Program shall cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 1. GENERAL PROVISIONS.

§5F-1-2. Executive departments created; offices of secretary created.

(a) There are created, within the executive branch of the state government, the following departments:

(1) Department of Administration;
(2) Department of Environmental Protection;
(3) Department of Health and Human Resources;
(4) Department of Military Affairs and Public Safety Homeland Security;
(5) Department of Revenue;
(6) Department of Transportation;
(7) Department of Commerce; and
(8) Department of Veterans’ Assistance.
(b) Each department will be headed by a secretary appointed by the Governor with the advice and consent of the Senate. Each secretary serves at the will and pleasure of the Governor.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-1. Transfer and incorporation of agencies and boards; funds.

(a) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Administration:

1. Public Employees Insurance Agency provided in §5-16-1 et seq. of this code;
2. Governor’s Mansion Advisory Committee provided in §5A-5-1 et seq. of this code;
3. Commission on Uniform State Laws provided in §29-1A-1 et seq. of this code;
4. West Virginia Public Employees Grievance Board provided in §6C-3-1 et seq. of this code;
5. Board of Risk and Insurance Management provided in §29-12-1 et seq. of this code;
6. Boundary Commission provided in §29-23-1 et seq. of this code;
7. Public Defender Services provided in §29-21-1 et seq. of this code;
8. Division of Personnel provided in §29-6-1 et seq. of this code;
9. The West Virginia Ethics Commission provided in §6B-2-1 et seq. of this code;
10. Consolidated Public Retirement Board provided in §5-10D-1 et seq. of this code; and
11. Real Estate Division provided in §5A-10-1 et seq. of this code.

(b) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Commerce:

1. Division of Labor provided in §21-1-1 et seq. of this code, which includes:
   (A) Occupational Safety and Health Review Commission provided in §21-3A-1 et seq. of this code; and
(B) Board of Manufactured Housing Construction and Safety provided in §21-9-1 et seq. of this code.

(2) Office of Miners’ Health, Safety and Training provided in §22A-1-1 et seq. of this code.

The following boards are transferred to the Office of Miners’ Health, Safety and Training for purposes of administrative support and liaison with the Office of the Governor:

(A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review Committee provided in §22A-6-1 et seq. of this code;

(B) Board of Miner Training, Education and Certification provided in §22A-7-1 et seq. of this code; and

(C) Mine Inspectors’ Examining Board provided in §22A-9-1 et seq. of this code.

(3) The West Virginia Development Office provided in §5B-2-1 et seq. of this code;

(4) Division of Natural Resources and Natural Resources Commission provided in §20-1-1 et seq. of this code;

(5) Division of Forestry provided in §19-1A-1 et seq. of this code;

(6) Geological and Economic Survey provided in §29-2-1 et seq. of this code; and

(7) Workforce West Virginia provided in chapter 21A of this code, which includes:

(A) Division of Unemployment Compensation;

(B) Division of Employment Service;

(C) Division of Workforce Development; and

(D) Division of Research, Information and Analysis.

(8) Office of Energy, within the Development Office, provided in §5B-2F-1 et seq. of this code.

(9) West Virginia Tourism Office and Tourism Commission provided in §5B-2I-1 et seq. of this code; and

(10) Division of Rehabilitation Services provided in §18-10A-1 et seq. of this code.
(c) The Economic Development Authority provided in §31-15-1 et seq. of this code is continued as an independent agency within the executive branch.

(d) The Water Development Authority and the Water Development Authority Board provided in §22C-1-1 et seq. of this code is continued as an independent agency within the executive branch.

(e) The West Virginia Educational Broadcasting Authority provided in §10-5-1 et seq. of this code and the State Library Commission provided in §10-1-1 et seq. of this code are each continued as separate independent agencies within the Department of Arts, Culture and History, which shall provide administrative support for both entities.

(f) The Division of Culture and History as established in §29-1-1 et seq. of this code is continued as a separate independent agency within the Executive Branch as the Department of Arts, Culture and History. All references throughout this code to the “Division of Culture and History” means the “Department of Arts, Culture and History”.

(g) The following agencies and boards, including all of the allied, advisory, and affiliated entities, are transferred to the Department of Environmental Protection for purposes of administrative support and liaison with the Office of the Governor:

1. Air Quality Board provided in §22B-2-1 et seq. of this code;
2. Solid Waste Management Board provided in §22C-3-1 et seq. of this code;
3. Environmental Quality Board, or its successor board, provided in §22B-3-1 et seq. of this code;
4. Surface Mine Board provided in §22B-4-1 et seq. of this code;
5. Oil and Gas Inspectors’ Examining Board provided in §22C-7-1 et seq. of this code;
6. Shallow Gas Well Review Board provided in §22C-8-1 et seq. of this code; and
7. Oil and Gas Conservation Commission provided in §22C-9-1 et seq. of this code.
(h) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Health and Human Resources:

(1) Human Rights Commission provided in §5-11-1 et seq. of this code;
(2) Bureau for Public Health provided in §16-1-1 et seq. of this code;
(3) Office of Emergency Medical Services and the Emergency Medical Service Advisory Council provided in §16-4C-1 et seq. of this code;
(4) Health Care Authority provided in §16-29B et seq. of this code;
(5) State Commission on Intellectual Disability provided in §29-15-1 et seq. of this code;
(6) Women’s Commission provided in §29-20-1 et seq. of this code; and
(7) Bureau for Child Support Enforcement provided in chapter 48 of this code.

(i) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Military Affairs and Public Safety Homeland Security:

(1) Adjutant General’s Department provided in §15-1A-1 et seq. of this code;
(2) State Armory Board provided in §15-6-1 et seq. of this code;
(3) Military Awards Board provided in §15-1G-1 et seq. of this code;
(4) (1) West Virginia State Police; provided in §15-2-1 et seq. of this code
(5) (2) Division of Homeland Security and Emergency Management and Disaster Recovery Board provided in §15-5-1 et seq. of this code and Emergency Response Commission provided in §15-5A-1 et seq. of this code: Provided, That notwithstanding any other provision of this code to the contrary, whenever in this code, or a rule promulgated thereunder, a reference is made to the Division of Homeland Security and Emergency Management, it shall be construed to mean the Division of Emergency Management;
(6) Sheriffs’ Bureau provided in §15-8-1 et seq. of this code.
(7) (3) Division of Justice and Community Administrative Services; provided in §15-9A-1 et seq. of this code

(8) (4) Division of Corrections and Rehabilitation; provided in chapter 25 § of this code

(9) (5) Fire Commission; provided in §29-3-1 et seq. of this code

(10) Regional Jail and Correctional Facility Authority provided in §31-20-1 et seq. of this code

(6) The State Fire Marshal; and

(11) (7) Board of Probation and Parole; provided in §62-12-1 et seq. of this code

(8) The West Virginia Fusion Center;

(9) The Division of Protective Services; and

(10) Any other agency or entity hereinafter established within the Department of Homeland Security by an act of the legislature.

(j) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Revenue:

(1) Tax Division provided in chapter 11 of this code;

(2) Racing Commission provided in §19-23-1 et seq. of this code;

(3) Lottery Commission and position of Lottery Director provided in §29-22-1 of this code;

(4) Insurance Commissioner provided in §33-2-1 et seq. of this code;

(5) West Virginia Alcohol Beverage Control Commissioner provided in §11-16-1 et seq. of this code and §60-2-1 et seq. of this code;

(6) Board of Banking and Financial Institutions provided in §31A-3-1 et seq. of this code;

(7) Lending and Credit Rate Board provided in chapter 47A of this code;

(8) Division of Financial Institutions provided in §31A-2-1 et seq. of this code;

(9) The State Budget Office provided in §11B-2-1 et seq. of this code;

(10) The Municipal Bond Commission provided in §13-3-1 et seq. of this code;
(11) The Office of Tax Appeals provided in §11-10A-1 of this code; and

(12) The State Athletic Commission provided in §29-5A-1 et seq. of this code.

(k) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Transportation:

(1) Division of Highways provided in §17-2A-1 et seq. of this code;

(2) Parkways Authority provided in §17-16A-1 et seq. of this code;

(3) Division of Motor Vehicles provided in §17A-2-1 et seq. of this code;

(4) Driver’s Licensing Advisory Board provided in §17B-2-1 et seq. of this code;

(5) Aeronautics Commission provided in §29-2A-1 et seq. of this code;

(6) State Rail Authority provided in §29-18-1 et seq. of this code; and

(7) Public Port Authority provided in §17-16B-1 et seq. of this code.

(l) Effective July 1, 2011, the Veterans’ Council provided in §9A-1-1 et seq. of this code, including all of the allied, advisory, affiliated, or related entities and funds associated with it, is incorporated in and administered as a part of the Department of Veterans’ Assistance.

(m) Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of §5F-2-2 of this code, the position of administrator and the powers, authority, and duties of each administrator and agency are not affected by the enactment of this chapter.

(n) Except for powers, authority, and duties that have been delegated to the secretaries of the departments by the provisions of §5F-2-2 of this code, the existence, powers, authority, and duties of boards and the membership, terms and qualifications of members of the boards are not affected by the enactment of this chapter. All boards that are appellate bodies or are independent decision makers shall not have their appellate or independent decision-making status affected by the enactment of this chapter.
(o) Any department previously transferred to and incorporated in a department by prior enactment of this section means a division of the appropriate department. Wherever reference is made to any department transferred to and incorporated in a department created in §5F-1-2 of this code, the reference means a division of the appropriate department and any reference to a division of a department so transferred and incorporated means a section of the appropriate division of the department.

(p) When an agency, board, or commission is transferred under a bureau or agency other than a department headed by a secretary pursuant to this section, that transfer is solely for purposes of administrative support and liaison with the Office of the Governor, a department secretary or a bureau. Nothing in this section extends the powers of department secretaries under §5F-2-2 of this code to any person other than a department secretary and nothing limits or abridges the statutory powers and duties of statutory commissioners or officers pursuant to this code.

§5F-2-2. Power and authority of secretary of each department.

(a) Notwithstanding any other provision of this code to the contrary, the secretary of each department shall have plenary power and authority within and for the department to:

(1) Employ and discharge within the office of the secretary employees as may be necessary to carry out the functions of the secretary, which employees shall serve at the will and pleasure of the secretary;

(2) Cause the various agencies and boards to be operated effectively, efficiently and economically and develop goals, objectives, policies and plans that are necessary or desirable for the effective, efficient and economical operation of the department;

(3) Eliminate or consolidate positions, other than positions of administrators or positions of board members and name a person to fill more than one position;

(4) Transfer permanent state employees between departments in accordance with the provisions of section seven of this article;
(5) Delegate, assign, transfer or combine responsibilities or duties to or among employees, other than administrators or board members;

(6) Reorganize internal functions or operations;

(7) Formulate comprehensive budgets for consideration by the Governor and transfer within the department funds appropriated to the various agencies of the department which are not expended due to cost savings resulting from the implementation of the provisions of this chapter: Provided, That no more than 25 percent of the funds appropriated to any one agency or board may be transferred to other agencies or boards within the department: Provided, however, That no funds may be transferred from a special revenue account, dedicated account, capital expenditure account or any other account or funds specifically exempted by the Legislature from transfer, except that the use of appropriations from the state Road Fund transferred to the office of the Secretary of the Department of Transportation is not a use other than the purpose for which the funds were dedicated and is permitted: Provided further, That if the Legislature by subsequent enactment consolidates agencies, boards or functions, the appropriate secretary may transfer the funds formerly appropriated to the agency, board or function in order to implement consolidation.

The authority to transfer funds under this section shall expire on June 30, 2010;

(8) Enter into contracts or agreements requiring the expenditure of public funds and authorize the expenditure or obligation of public funds as authorized by law: Provided, That the powers granted to the secretary to enter into contracts or agreements and to make expenditures or obligations of public funds under this provision shall not exceed or be interpreted as authority to exceed the powers granted by the Legislature to the various commissioners, directors or board members of the various departments, agencies or boards that comprise and are incorporated into each secretary’s department under this chapter;

(9) Acquire by lease or purchase property of whatever kind or character and convey or dispose of any property of whatever kind or character as authorized by law: Provided, That the powers granted to the secretary to lease, purchase, convey or dispose of such property shall be
exercised in accordance with §5A-3-1 et seq., §5A-10-1 et seq., and §5A-3-11 et seq. of this code:

Provided, however, That the powers granted to the secretary to lease, purchase, convey or dispose of such property shall not exceed or be interpreted as authority to exceed the powers granted by the Legislature to the various commissioners, directors or board members of the various departments, agencies or boards that comprise and are incorporated into each secretary’s department under this chapter;

(10) Conduct internal audits;

(11) Supervise internal management;

(12) Promulgate rules, as defined in §29A-1-2 of this code, to implement and make effective the powers, authority and duties granted and imposed by the provisions of this chapter in accordance with the provisions of chapter 29A of this code;

(13) Grant or withhold written consent to the proposal of any rule, as defined in §29A-1-2 of this code, by any administrator, agency or board within the department. Without written consent, no proposal for a rule shall have any force or effect;

(14) Delegate to administrators the duties of the secretary as the secretary may deem appropriate, from time to time, to facilitate execution of the powers, authority and duties delegated to the secretary; and

(15) Take any other action involving or relating to internal management not otherwise prohibited by law.

(b) The secretaries of the departments hereby created shall engage in a comprehensive review of the practices, policies and operations of the agencies and boards within their departments to determine the feasibility of cost reductions and increased efficiency which may be achieved therein, including, but not limited to, the following:

(1) The elimination, reduction and restriction of the state’s vehicle or other transportation fleet;
(2) The elimination, reduction and restriction of state government publications, including annual reports, informational materials and promotional materials;

(3) The termination or rectification of terms contained in lease agreements between the state and private sector for offices, equipment and services;

(4) The adoption of appropriate systems for accounting, including consideration of an accrual basis financial accounting and reporting system;

(5) The adoption of revised procurement practices to facilitate cost-effective purchasing procedures, including consideration of means by which domestic businesses may be assisted to compete for state government purchases; and

(6) The computerization of the functions of the state agencies and boards.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, none of the powers granted to the secretaries herein shall be exercised by the secretary if to do so would violate or be inconsistent with the provisions of any federal law or regulation, any federal-state program or federally delegated program or jeopardize the approval, existence or funding of any program.

(d) The layoff and recall rights of employees within the classified service of the state as provided in §29-6-10(5) and §29-6-10(6) of this code shall be limited to the organizational unit within the agency or board and within the occupational group established by the classification and compensation plan for the classified service of the agency or board in which the employee was employed prior to the agency or board’s transfer or incorporation into the department: Provided, That the employee shall possess the qualifications established for the job class. The duration of recall rights provided in this subsection shall be limited to two years or the length of tenure, whichever is less. Except as provided in this subsection, nothing contained in this section shall be construed to abridge the rights of employees within the classified service of the state as provided in §29-6-10 and §29-6-10a of this code.
(e) Notwithstanding any other provision of this code to the contrary, the secretary of each department with authority over programs which have an impact on the delivery of health care services in the state or are payors for health care services or are payors for prescription drugs, including, but not limited to, the Public Employees Insurance Agency, the Department of Health and Human Resources, the Bureau of Senior Services, the Children’s Health Insurance Program, the Health Care Authority, the Office of the Insurance Commissioner, the Division of Corrections, the Division of Juvenile Services, the Regional Jail and Correctional Facility Authority, state colleges and universities, public hospitals, state or local institutions including nursing homes and veterans’ homes, the Division of Rehabilitation Services, public health departments, the Bureau for Medical Services and other programs, which have an impact on the delivery of health care services or are payors for health care services or are payors for prescription drugs, in West Virginia shall cooperate with the Governor’s Office of Health Enhancement and Lifestyle Planning established pursuant to §16-29h-1 et seq. for the purpose of improving the health care delivery services in West Virginia for any program over which they have authority.

(f) Notwithstanding any other provision of this code to the contrary, the secretary of each department shall cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 1A. ADJUTANT GENERAL.

§15-1A-3. Duties.

(a) The Adjutant General shall be chief of staff to the Governor and commanding general of the organized militia. He or she shall direct the planning and employment of the military forces of the state in carrying out their state mission, establish unified command of state forces whenever jointly engaged, coordinate the military affairs with the civil defense of the state and organize and coordinate the activities of all civil agencies including local and state police in event of declaration
of a limited emergency by the Governor pursuant to article one-d of this chapter. In time of
emergency or disaster, the Adjutant General shall coordinate his or her activities with those of the
Office of Emergency Services provided for by article five of this chapter. He or she shall be
custodian of all military records of the State and shall keep the same indexed and available for
ready reference. He or she shall keep an itemized account of all moneys received and dispensed
from all sources and shall make an annual report to the Governor on the condition of the organized
militia, receipts and expenditures and such other matters relating to the military forces of the State
and the Adjutant General’s department as he or she shall deem expedient.

(b) The Adjutant General shall be responsible for the organization, administration, training
and supply of the organized militia and shall cause to be procured, prepared and issued to the
organizations of the organized militia all necessary books and blanks for reports, records, returns
and general administration, and shall, at the expense of the state, cause the military laws, military
code and rules and regulations in force to be printed, bound in proper form and distributed, one
copy to each commissioned officer, and one each to all the circuit, intermediate and criminal court
judges, sheriffs and justices of the peace in the state requiring them and shall procure and supply
all necessary textbooks of drill and instruction. He or she shall keep in his or her office an accurate
account of all state and United States property issued to the state. He or she shall keep on file in
his or her office all official bonds required by this chapter, the reports and returns of troops and
military forces of the state and all other writings and papers which are required to be transmitted
to and preserved at the general headquarters of the organized militia.

(c) The Adjutant General shall keep records of all service personnel from the state of West
Virginia, commissioned or enlisted, in any of the wars of the United States and of individual claims
of citizens of West Virginia for service rendered in such wars. He or she shall assist all persons
residing in this state having claims against the United States for pension, bounty or back pay or
such claims as have arisen out of, or by reason of, service in any of said wars. To this end he or
she shall cooperate with the agents or attorneys of such claimants, furnish to claimants only all
necessary certificates or certified abstracts from, or copies of, records or documents in his or her office and shall seek in all practicable ways to secure speedy and just action in all claims now pending or which may hereafter be filed: Provided, That any and all of the above services shall be rendered without charge to the claimant. He or she shall establish and maintain as a part of his or her office a bureau of records of the services of the West Virginia troops during such wars and shall keep arranged in proper and convenient form all records and papers pertaining thereto.

(d) Notwithstanding any other provision of this code to the contrary, the adjutant general shall cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties.

ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.


(a) The Office of Emergency Services is continued as the Division of Homeland Security and Emergency Management is continued as the Division of Emergency Management, within the Department of Military Affairs and Public Safety Homeland Security. All of the allied, advisory, affiliated or related entities, and funds associated with the Office of Emergency Services Division of Homeland Security and Emergency Management and all its functions, personnel, and property, are transferred to, incorporated in, and administered as a part of the Division of Homeland Security and Emergency Management. Wherever the words “Office of Emergency Services” or “Division of Homeland Security and Emergency Management” appear in this code, they shall mean the Division of Homeland Security and Emergency Management.

(b) A Director of the Division of Homeland Security and Emergency Management shall be appointed by the Governor, by and with the advice and consent of the Senate. The Governor shall consider applicants for director who at a minimum: (1) Have at least five years managerial or strategic planning experience; (2) are knowledgeable in matters relating to public safety, homeland security, emergency management and emergency response; and (3) have, at a minimum, a federally issued secret level security clearance or have submitted to or will submit to
a security clearance investigation for the purpose of obtaining, at a minimum, a federally issued secret level security clearance.

(c) The director may employ such technical, clerical, stenographic, and other personnel, fix their compensation and make expenditures within the appropriation to the division or from other funds made available for the purpose of providing homeland security and emergency management services to carry out the purpose of this article. Employees of the Division of Homeland Security and Emergency Management shall be members of the state Civil Service System and all appointments of the office, except those required by law to be exempt, shall be a part of the classified service under the Civil Service System: Provided, That the director may employ personnel that are not members of the Civil Service System for purposes provided in §15-5-3(g) of this code. Beginning on the effective date of this section, all employees of the Division of Emergency Management are exempt from the Civil Service System: Provided, That employees of the Division of Homeland Security and Emergency Management who are currently members of the classified service, having been transferred to the Division of Emergency Management, retain their classified service as long as they remain in their current classification. Thereafter, if the employee leaves his or her current classification and maintains employment in the Division of Emergency Management, that employee, at that time, becomes transferred to the classified-exempt service as that term is defined in §29A-6-2 of this code.

(d) The director and other personnel of the Division of Homeland Security and Emergency Management shall be provided with appropriate office space, furniture, equipment, supplies, stationery, and printing in the same manner as provided for personnel of other state agencies.

(e) The director, subject to the direction and control of the Governor through the Secretary of the Department of Military Affairs and Public Safety Homeland Security, shall be the executive head of the Division of Homeland Security and Emergency Management and shall be responsible to the Governor and the Secretary of the Department of Military Affairs and Public Safety Homeland Security for carrying out the program for homeland security and emergency
management in this state. The director, in consultation with the Secretary of the Department of Military Affairs and Public Safety Homeland Security, shall coordinate the activities of all organizations for homeland security and emergency management within the state and maintain liaison with and cooperate with homeland security, emergency management and other emergency service and civil defense agencies and organizations of other states and of the federal government, and shall have additional authority, duties, and responsibilities authorized by §15-5-1 et seq. of this code as may be prescribed by the Governor or the Secretary of the Department of Military Affairs and Public Safety Homeland Security.

(f) The director shall have the power to acquire in the name of the state by purchase, lease, or gift, real property and rights or easements necessary or convenient to construct thereon the necessary building or buildings for housing and homeland security and an emergency management control center.

(g) The director may, for the purposes of responding to a declared state of emergency or for the recovery from a declared state of emergency following the termination of the declaration, employ personnel or enter into contracts and subcontracts for goods or specialized technical services, subject to the following provisions:

(1) Employee positions shall be contingent on the receipt of the necessary federal and/or state funds.

(2) All employees employed pursuant to this subsection shall be exempt from both the classified services category and the classified exempt services category provided in §29-6-4 of this code.

(3) Each employee hired shall be deemed an at-will employee who may be discharged or released from his or her respective position without cause or reason.

(4) Employees may participate in the PEIA, PERS, workers’ compensation, unemployment compensation programs, or their equivalents.
(5) The director shall set appropriate salary rates for employees equivalent to a rate commensurate with industry standards.

(6) Contracts may be entered into pursuant to this subsection with the federal government, its instrumentalities and agencies, any state, territory or the District of Columbia and its agencies and instrumentalities, municipalities, foreign governments, public bodies, private corporations, partnerships, associations and individuals for specialized technical services at a rate commensurate with industry standards as determined by the director to support specific activities related to the response to or the recovery from a declared state of emergency.

§15-5-4. West Virginia disaster recovery board created; organization of board; appointment of board members; term of office and expenses of board members; meetings.

[Repealed.]

§15-5-4b. West Virginia Disaster Recovery Board to Disburse Funds from Recovery Trust Fund Disbursement.

Upon the proclamation of the existence of a state of emergency or state of preparedness under the provisions of §15-5-6 of this code, the State Resiliency Officer shall have the power upon its own determination that a disaster has occurred or is about to occur in this state to disburse funds from the disaster relief recovery trust fund created pursuant to §15-5-24 of this code to any person, political subdivision, or local organization for emergency services in such amounts and in such manner, and to take such other actions, as the State Resiliency Officer may determine is necessary or appropriate in order to provide assistance to any person, political subdivision, or local organization for emergency services responding to or recovering from the disaster, or otherwise involved in disaster recovery activities: Provided, That except as provided hereafter in this section, requisitions for payment shall not be made or authorized for payment by the Auditor without the express approval of the State Resiliency Officer, except that the State Resiliency Officer’s approval shall be deemed to be made for the initial disbursement to cover the first 30 days of disaster response, and: Provided, however, That all subsequent disbursements
arising out of the events surrounding the state of emergency or preparedness giving rise to the relevant disbursements shall require the express approval of the State Resiliency Officer, which approval shall not be unduly withheld or delayed.

§15-5-4c. Powers and duties of related to the West Virginia Disaster Recovery board Trust Fund.

The board State Resiliency Officer is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate the purposes set forth in §15-5-4b of this article code. The authority State Resiliency Officer has the power:

1. To accept appropriations, gifts, grants, bequests, and devises from any source, public or private, for deposit into the recovery fund, and to use or dispose of the same to provide assistance to any person, political subdivision, or local organization for emergency services responding to or recovering from a disaster, or otherwise involved in disaster recovery activities;

2. To make and execute contracts, leases, releases, and other instruments necessary or convenient for the exercise of its power;

3. To make, and from time to time, amend, and repeal bylaws for the governance of its activities not inconsistent with the provisions of this article;

4. To sue and be sued;

5. To acquire, hold, and dispose of real and personal property;

6. To enter into agreements or other transactions with any federal or state agency, political subdivision, or person;

7. To provide for the deposit of any funds or assets of the West Virginia disaster relief recovery trust fund with the state Board of Investments for investment;

8. To procure insurance against any loss in connection with its property in such amounts, and from such insurers, as may be necessary or desirable;

9. To use the recovery trust fund to pay the costs incurred by any state department or agency for the purpose of obtaining property appraisals and other certifications necessary to
justify the involvement of the Federal Emergency Management Agency and to allow its
determination of a presidentially declared disaster;

(10) To establish, or assist in the establishment of, temporary housing and residential
housing by, with or for political subdivisions declared to be in a disaster area by the Federal
Emergency Management Agency or other agency or instrumentality of the United States or by
the Governor of this state;

(11) To enter into purchase, lease, or other arrangements with an agency of the United
States or this state for temporary housing or residential housing units to be occupied by disaster
victims and make such units available to any political subdivision or persons;

(12) To assist political subdivisions, local organizations for emergency services and
nonprofit corporations in acquiring sites necessary for temporary housing or residential housing
for disaster victims and in otherwise preparing the sites to receive and use temporary housing or
residential housing units, including payment of transportation charges, by advancing or lending
funds available to the board Division of Emergency Management from the recovery fund;

(13) To make grants and provide technical services to assist in the purchase or other
acquisition, planning, processing, design, construction, or rehabilitation, improvement or
operation of temporary housing or residential housing: Provided, That no such grant or other
financial assistance shall be provided except upon a written finding by the board State Resiliency
Officer that such assistance and the manner in which it will be provided constitute a disaster
recovery activity;

(14) To make or participate in the making of insured or uninsured construction and
permanent loans or grants for temporary housing or residential housing, community facilities, and
essential business activities: Provided, That no such loan or grant shall be made except upon a
written finding by the board State Resiliency Officer that the loan or grant and the manner in which
it will be provided constitute a disaster recovery activity and that the loan or grant is not otherwise

available, wholly or in part, from a private or public lender upon reasonably equivalent terms and conditions; and

(15) Do all acts necessary and proper to carry out the powers granted to the board State Resiliency Office, under this article.

§15-5-13. Appropriations; acceptance of services, gifts, grants, and loans.

(a) Each political subdivision shall have the power to make appropriations in the manner provided by law for making appropriations for the ordinary expenses of such political subdivision for the payment of expenses of its local organization for emergency services or of its proportionate share of expenses of a regional organization for emergency services, or both.

(b) Whenever the federal government or any agency or officer thereof shall offer to any authority, corporation, partnership, or other entity, public or private or the State, or through the State to any political subdivision thereof, services, equipment, supplies, materials or funds by way of gift, grant or loan, for purposes relating to homeland security or emergency services, the State, after consultation and in coordination with the Secretary State Resiliency Officer and acting through the Governor, or a political subdivision after consultation and in coordination with the Secretary State Resiliency Officer and acting with the consent of the Governor and through its executive officer or governing body, may accept the offer. Upon acceptance, the Governor of the state or executive officer or governing body of the political subdivision may authorize any officer of the State or of the political subdivision, as the case may be, to receive services, equipment, supplies, materials or funds on behalf of the state or the political subdivision and subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer.

(c) Whenever any person, firm, or corporation shall offer to the State or to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan, for purposes relating to homeland security or emergency services, the State, after consultation and in coordination with the Secretary State Resiliency Officer and acting through the Governor, or the political subdivision after consultation and in coordination with the Secretary.
State Resiliency Officer and acting through its executive officer or governing body, may accept
the offer. Upon acceptance, the Governor of the State or executive officer or governing body of
the political subdivision may authorize any officer of the State or of the political subdivision, as
the case may be, to receive services, equipment, supplies, materials, or funds on behalf of the
State or the political subdivision and subject to the terms of the offer.

(d) The Governor may require any agency, authority, corporation, partnership, or other
entity to furnish a report, in both written and electronic form, detailing the source and receipt of all
services, equipment, supplies, materials, or funds for purposes relating to homeland security or
emergency services as a condition of receiving these from the State. Within 10 days of the receipt
of any reports required under this subsection, the Governor shall furnish copies thereof to the
Legislature.

§15-5-20a. Floodplain manager training.

(a) Community participation in the National Flood Insurance Program is important to
manage and mitigate the special flood hazard areas in West Virginia. Therefore, all state, county,
municipality and local floodplain managers should be adequately trained in floodplain
management.

(b) Commencing July 1, 2012, each floodplain manager in the state is required to complete
six hours of training in floodplain management annually to maintain good standing with the West

(c) A governmental unit that has a floodplain manager who fails to obtain the required
training shall suspend the floodplain manager from his or her floodplain management
responsibilities until the training requirement is met.

(d) A governmental unit that has a floodplain manager who fails to obtain the required
training shall transfer its floodplain management responsibilities and all associated fees to a
governmental unit that has a floodplain manager in good standing.

(a) There is hereby created a special trust fund which shall be designated and known as the West Virginia Disaster Recovery Trust Fund to be administered by the West Virginia disaster recovery board State Resiliency Officer. The recovery fund shall consist of: (i) Any appropriations, grants, gifts, contributions, or revenues received by the recovery fund from any source, public or private; and (ii) all income earned on moneys, properties, and assets held in the recovery fund. When any funds are received by the board State Resiliency Officer from any source, they shall be paid into the recovery fund, and shall be disbursed and otherwise managed in the manner set forth in this article. The recovery fund shall be treated by the Auditor and Treasurer as a special revenue fund and not as part of the general revenues of the state.

(b) All moneys, properties, and assets acquired by the State of West Virginia in the disaster recovery fund shall be held by it in trust for the purposes of carrying out its powers and duties, and shall be used and reused in accordance with the purposes and provisions of this article. Such moneys, properties, and assets shall at no time be commingled with other public funds. Disbursements from the recovery fund shall be made only upon the written requisition of the chairman accompanied by a certified resolution of the board Governor, the State Resiliency Officer, on behalf of and authorized by the Governor, or as set forth in §15-5-4b of this code. If no need exists for immediate use or disbursement, moneys, properties, and assets in the recovery fund shall be invested or reinvested by the board State Resiliency Officer as provided in this article.


The board State Resiliency Officer shall not be required to pay any taxes and assessments to the state or any political subdivision of the state upon any of its moneys, properties, or assets or upon its obligations or other evidences of indebtedness pursuant to the provisions of this article, or upon any moneys, funds, revenues, or other income held or received by into the West Virginia disaster recovery board fund.

§15-5-27. Annual report
§15-5-29. Cooperation with State Resiliency Office.

Notwithstanding any other provision of this code to the contrary, the Director of the Division of Emergency Management shall cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties.

CHAPTER 15A. DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY HOMELAND SECURITY.

ARTICLE 1. DEFINITIONS.


“Department” means the Department of Military Affairs and Public Safety Homeland Security.

§15A-1-3. “Secretary.”

“Secretary” means the Secretary of the Department of Military Affairs and Public Safety Homeland Security.


(a)(1) The Department of Homeland Security is established within the Executive Branch as a criminal justice agency. In addition to all other powers and duties set forth in this code, the department is designated as the principal state agency to coordinate the receipt, distribution, and monitoring of all funds available from any source for the purpose of equipping, training, research, and education in regard to homeland security related items, issues, or services. The department is authorized to coordinate and establish standards for all operations and activities of the state related to homeland security efforts and to establish protocols for coordinating and sharing information with state and federal law enforcement and intelligence agencies responsible for investigating and collecting information related to homeland security and national security threats.
(2) The department is designated as the state administrative agency responsible for homeland security and emergency management for the planning and development of state programs and grants which may be funded by federal, state, or other allocations in the areas of homeland security and emergency management, unless such administration has been specifically entrusted to another state agency by the Governor or the Legislature.

(3) Notwithstanding any other provision of this code to the contrary, whenever in this code, or a rule promulgated thereunder, a reference is made to the Department of Military Affairs and Public Safety, it means the Department of Homeland Security.

(b) The secretary is the chief executive officer of the department. Subject to §5F-2-2 of this code, the secretary shall organize the department into such offices, sections, agencies and other units of activity as may be found by the secretary to be desirable for the orderly, efficient and economical administration of the department and for the accomplishment of its objects and purposes. The secretary may appoint a deputy secretary, chief of staff, assistants, hearing officers, clerks, stenographers, and other officers, technical personnel, and employees needed for the operation of the department and may prescribe their powers and duties and fix their compensation within amounts appropriated.

(c) The secretary has the power to and may designate supervisory officers or other officers or employees of the department to substitute for him or her on any board or commission established under this code or to sit in his or her place in any hearings, appeals, meetings or other activities with such substitute having the same powers, duties, authority, and responsibility as the secretary. The secretary has the power to delegate, as he or she considers appropriate, to supervisory officers or other officers or employees of the department his or her powers, duties, authority and responsibility relating to such duties and functions set forth in this chapter or elsewhere in this code.

(d) The secretary has responsibility for the conduct of the intergovernmental relations of the department, including assuring:
(1) That the department carries out its functions in a manner which supplements and complements the homeland security and public safety policies, programs and procedures of the federal government, other state governments, and other instrumentalities of this state; and

(2) That appropriate officers and employees of the department consult with individuals responsible for making policy relating to homeland security and public safety issues in the federal government, other state governments, and other instrumentalities of this state concerning differences over policies, programs, and procedures and concerning the impact of statutory law and rules upon the homeland security and public safety of this state.

(e) In addition to other powers, duties, and responsibilities granted and assigned to the secretary by this code, the secretary is authorized and empowered to:

(1) Sign and execute in the name of the state by the Department of Homeland Security any contract or agreement with the federal government or its departments or agencies, subdivisions of the state, corporations, associations, partnerships or individuals: Provided, That the powers granted to the secretary to enter into agreements or contracts and to make expenditures and obligations of public funds under this subdivision may not exceed or be interpreted as authority to exceed the powers granted by the Legislature to the various commissioners, directors, or board members of the various departments, agencies, or boards that comprise and are incorporated into each secretary’s department pursuant to the provisions of chapter 5F of this code;

(2) Conduct research in improved homeland security and public safety methods and disseminate information to the citizens of this state;

(3) Require any persons contracting to install, establish, modify, operate, or close a correctional or other public safety facility to furnish the fingerprints of the person or persons; any officer, director, or manager of the contractor; any person owning a five percent or more interest, beneficial or otherwise, in the contractor’s business; or any other person conducting or managing the affairs of the contractor, in whole or in part. These fingerprints may be used to obtain and
review any police record for the purposes that may be in the interest of homeland security or public safety, and to use the fingerprints furnished to conduct a criminal records check through the Criminal Identification Bureau of the West Virginia State Police and a national criminal history check through the Federal Bureau of Investigation. The results of the checks shall be provided to the secretary.

(4) Acquire for the state in the name of the Department of Homeland Security by purchase, lease, or agreement, or accept or reject for the state, in the name of the Department of Homeland Security, gifts, donations, contributions, bequests, or devises of money, security, or property, both real and personal, and any interest in property;

(5) Provide for workshops, training programs, and other educational programs, apart from or in cooperation with other governmental agencies, necessary to ensure adequate standards of public service in the department. The secretary may provide for technical training and specialized instruction of any employee. Approved educational programs, training and instruction time may be compensated for as a part of regular employment. The secretary is authorized to pay out of federal or state funds, or both, as such funds are available, fees and expenses incidental to the educational programs, training and instruction. Eligibility for participation by employees shall be in accordance with guidelines established by the secretary; and

(f) The secretary shall be appointed by the Governor, by and with the advice and consent of the Senate and serves at the will and pleasure of the Governor.

(g) The secretary shall serve as the Homeland Security Advisor (HSA) for West Virginia, and shall be responsible for coordinating, designing, and implementing West Virginia’s program for homeland security. The secretary shall be the principal point of contact between the State of West Virginia and the federal government with respect to homeland security issues. The HSA shall either possess at least a secret clearance through the federal government or be able to qualify for, and be in the process of obtaining, such clearance at the time of his or her appointment as HSA. The HSA shall keep the Governor advised of all homeland security matters and shall be
the main point of contact for the Governor on these issues. The secretary, with permission of the
Governor, may delegate all or a portion of the functions of the HSA to a designee who possesses
at least a secret clearance.

(h) Notwithstanding any other provision of this code to the contrary, any records compiled
by the department or any division, agency, office, or unit thereof, the disclosure of which could be
used to create an endangerment to municipal, county, state, or national welfare and security, are
not public records and are not subject to disclosure in response to a Freedom of Information Act
request under § 29B-1-1 et seq. of this code.

(i) The Department of Homeland Security shall cooperate with the State Resiliency Office
to the fullest extent practicable to assist that office in fulfilling its duties.

ARTICLE 9. OFFICE OF ADMINISTRATIVE HEARINGS.

§15A-9-1. Office created; appointment of Chief Hearing Examiner.

(a) The Office of Administrative Hearings is created as a separate operating agency within
the department.

(b) The secretary shall appoint a director of the office who serves as the administrative
head of the office and as Chief Hearing Examiner.

(c) Prior to appointment, the Chief Hearing Examiner shall be a citizen of the United States
and a resident of this state who is admitted to the practice of law in this state.

(d) The salary of the Chief Hearing Examiner shall be set by the secretary of the
department.

(e) In addition to adherence to the code of conduct set forth in §6B-2-5a of this code, the
Chief Hearing Examiner during his or her term shall:

(1) Devote his or her full time to the duties of the position;

(2) Not otherwise engage in the active practice of law or be associated with any group or
entity which is itself engaged in the active practice of law. This subsection does not prohibit the
Chief Hearing Examiner from being a member of a national, state or local bar association or
committee, or of any other similar group or organization, nor does it prohibit the Chief Hearing
Examiner from engaging in the practice of law by representing himself, herself or his or her
immediate family in their personal affairs in matters not subject to this article;
(3) Not engage directly or indirectly in any activity, occupation or business interfering or
inconsistent with his or her duties as Chief Hearing Examiner;
(4) Not hold any other appointed public office or any elected public office or any other
position of public trust; and
(5) Not be a candidate for any elected public office, or serve on or under any committee
of, any political party.
(f) The Chief Hearing Examiner serves at the will and pleasure of the secretary.
(a) The Chief Hearing Examiner is the chief administrator of the Office of Administrative
Hearings and he or she may employ hearing examiners and other clerical personnel necessary
for the proper administration of this article.
(1) The Chief Hearing Examiner may delegate administrative duties to other employees,
but the Chief Hearing Examiner is responsible for all official delegated acts.
(2) All employees of the Office of Administrative Hearings are classified exempt.
(b) The Chief Hearing Examiner shall:
(1) Direct and supervise the work of the office staff;
(2) Hold hearings;
(3) Make hearing assignments;
(4) Maintain the records of the office;
(5) Review and approve decisions of hearing examiners as to legal accuracy, clarity, and
other requirements; and
(6) Perform the other duties necessary and proper to carry out the purposes of this article.
(c) The administrative expenses of the office shall be included within the annual budget of the Division of Administrative Services.


Notwithstanding any provision of this code to the contrary, the Office of Administrative Hearings has jurisdiction to hear and determine all:

(a) Level one grievance proceedings for all divisions of the department, except for the State Police.

(b) Appeals from decisions or orders of the State Fire Commission, except as otherwise provided in §15A-10-9(b) of this Code;

(c) Other matters for which a hearing examiner is necessary within the department or any division of the department; and

(d) Other matters which may be conferred upon the office by statute or legislatively approved rules.


(a) All level one grievance hearings before the office shall be heard in accordance with practices and procedures as set forth in §6C-2-1 et seq. of this code.

(b) All hearings on appeals before the office shall be heard de novo and conducted pursuant to the provisions of the contested case procedure set forth in §29A-5-1 et seq. of this code.

(1) Notwithstanding any provision of this code to the contrary, the division head, or the Fire Commission, may be represented at hearings conducted by the office and evidence submitted by the division head may be considered in such hearings with or without such representation.

(2) The West Virginia Rules of Evidence governing proceedings in the courts of this state shall be given like effect in hearings held before a hearing examiner. All testimony shall be given under oath.
(3) The hearing examiner may request proposed findings of fact and conclusions of law from the parties prior to the issuance by the office of the decision in the matter.

(c) Hearings and all records of hearings are exempt from the requirements of §29B-1-1 et seq. of this code, until the results of the hearing have been rendered: Provided, That once the decision is rendered, the records may be exempt from disclosure, pursuant to §29B-1-4 or other applicable section of this code.


The Office of Administrative Hearings may propose legislative and procedural rules in accordance with the provisions of chapter 29A of this code in order to implement the provisions of this article and to carry out the duties prescribed therein.

§15A-9-6. Duty to provide notice of change of address.

Any person who has any pending contested matter before the Office of Administrative Hearings is required to provide notice of a change in address in writing at least 10 days prior to any scheduled hearing in which they are a party. If the person’s final hearing is held prior to the person’s change in address, then the person is required to provide the written notice prior to the issuance of the final order in their case. Written notice must be provided by certified mail, return receipt requested, facsimile, or by electronic mail, to the Office of Administrative Hearings.


(a) In order to implement an orderly and efficient transition of the administrative hearing process from the many divisions of the department, the secretary may establish interim policies and procedures for the transfer of administrative hearings, appeals from decisions or orders of, as contemplated by this article, currently administered by the separate divisions and the Fire Commission, no later than October 1, 2020.

(b) On the effective date of this article, all equipment and records necessary to effectuate the purposes of this article shall be transferred from the many divisions of the department to the
Office of Administrative Hearings: Provided, That in order to provide for a smooth transition, the secretary may establish interim policies and procedures, determine how the equipment and records are to be transferred and provide that the transfers provided for in this subsection take effect no later than October 1, 2020.

ARTICLE 10. FIRE MARSHAL.

§15A-10-1. State Fire Marshal and Office of the State Fire Marshal transferred to Department of Homeland Security; appointment of State Fire Marshal; removal; salary; qualifications; responsibilities; employees; equipment.

(a) The State Fire Marshal and the Office of the State Fire Marshal, heretofore existing in this code, are hereby continued in all respects except that all powers and duties exercised by the State Fire Commission with respect to the State Fire Marshal and the Office of the State Fire Marshal are terminated and all such powers and duties are hereby transferred to and vested in the Department of Homeland Security except as provided otherwise in this article.

(b) When a vacancy occurs in the position of State Fire Marshal, the Fire Commission, at the request of the Governor, shall submit a list of not more than three names to the Governor from which the Governor shall make the appointment. The Governor shall appoint a State Fire Marshal, from a list of names submitted by the Fire Commission. The State Fire Marshal serves at the will and pleasure of the Governor and is exempt from coverage under the classified civil service system.

(c) The State Fire Marshal shall have a baccalaureate degree from an accredited four-year college or university, or equivalent experience, and six years of full-time or part-time equivalent paid or volunteer experience in fire prevention or fire safety including two years in a supervisory capacity in fire prevention and fire safety.

(d) The State Fire Marshal, shall have full responsibility for the enforcement of fire and life safety programs in this state designated to minimize fire hazards and disaster and loss of life and property from these causes. These responsibilities include, but are not limited to, the
establishment and enforcement of fire safety practices throughout the state, preventive inspection and correction activities, coordination of fire safety programs with volunteer and paid fire departments, and critical analysis and evaluation of West Virginia’s fire loss statistics for determination of problems and solutions.

(e) The State Fire Marshal may employ such technical, clerical, stenographic and other personnel and fix their compensation and may incur such expenses as may be necessary in the performance of the duties of his or her office within the appropriation therefor. Employees of the Fire Marshal’s office shall be members of the state civil service system and all appointments of the office shall be a part of the classified service under the civil service system.

(f) The State Fire Marshal may employ a chief deputy fire marshal, who shall be classified exempt. The deputy shall have a baccalaureate degree from an accredited four-year college or university, or equivalent experience, and six years of full-time or part-time equivalent paid or volunteer experience in fire prevention or fire safety including two years in a supervisory capacity in fire prevention and fire safety.

(g) Any individual who is employed by the State Fire Marshal to conduct criminal investigations or who may become actively involved in matters of a criminal nature shall first be required to pass a civil service examination testing his or her competency and proficiency in the law of arrest, search and seizure, and other criminal procedures relating to the powers granted to the State Fire Marshal pursuant to the provisions of this article: Provided, That all new hires to sworn positions of Fire Marshal 1, 2, or 3 and Deputy Fire Marshal, excluding the Chief Deputy as described in subdivision (f) of this section, shall comply with the law enforcement certification requirements set forth in § 30-29-1 et seq.

(h) The State Fire Marshal and other personnel of the State Fire Marshal’s Office shall be provided with appropriate office space, furniture, equipment, supplies, stationery and printing in the same manner as provided for other state agencies.

(a) The State Fire Marshal may employ personnel, fix their compensation and, within funds available to do so, incur expenses as necessary in the performance of the duties of his or her office.

(b) The State Fire Marshal is responsible for the enforcement of fire programs within this state, training, uniform standards and certification, finance, and planning and fire prevention.

(c) The State Fire Marshal shall ensure that state and area training and education in fire service are operated throughout the state at a level consistent with needs identified by the State Fire Commission.

(d) The State Fire Marshal shall perform any such duties as necessary to assist the State Fire Commission in performing its duties and responsibilities as provided in §15A-11-1 et seq. of this code. This shall include, but not be limited to, performing inspections on fire departments, making recommendations on fire department boundary lines, making recommendations on applications for new fire departments, making recommendations on closures or suspensions of fire departments, and any other act or assistance to the State Fire Commission as may be necessary. The Fire Marshal may, in the case of imminent danger, issue immediate cease and desist orders on behalf of the State Fire Commission without their prior approval. In that case, the State Fire Commission shall act further upon said order at their next regular meeting.

(e) The State Fire Marshal may accept, on behalf of the Office of the State Fire Marshal, or 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. 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, has the authority to make expenditures of, or use of any tangible property, in order to effectuate the purposes of this article.
(f) Beginning July 1, 2020, applicants for certification or licensure in accordance with the education and training programs under the respective jurisdictions of State Fire Marshal shall be permitted to apply training hours earned via career technical education provided by West Virginia public schools or an apprenticeship program or employer-sponsored training program towards the requirements for certification and/or licensure by the State Fire Marshal as applicable. The State Fire Marshal shall, after consultation with the State Superintendent of Schools, propose rules for legislative approval, in accordance with the provisions of §29A-3-1 et seq. of this code, for the implementation and enforcement of these provisions. The rules shall provide at least the following:

(1) Standards and procedures for recognizing training hours acquired through career technical education provided by West Virginia public schools and applying those hours to requirements for testing and/or certification and/or licensure; and

(2) Standards and procedures for recognizing training hours acquired through apprenticeship programs and employer-sponsored training programs and applying those hours to requirements for testing and/or certification and/or licensure.

As used in this subsection:

“Apprentice” means someone who is enrolled in an apprenticeship program.

“Apprenticeship program” means a program offered by an employer to provide supervised on-the-job training to employees approved by the United States Department of Labor.

“Employer sponsored training program” means a program approved in accordance with a rule promulgated by the State Fire Commission or the State Fire Marshal under their respective authorities established in this code.

“License” means a valid and current certification or license issued by State Fire Commission or the State Fire Marshal for satisfactory completion of education and training programs under their respective jurisdictions.
“Career technical education” means programs of study, clusters, and pathways approved by the West Virginia Board of Education pursuant to state board policy.

(g) Notwithstanding any other provisions of this code, beginning on July 1, 2020, the State Fire Commission has no enforcement authority for violations of the fire code, or the building code. All enforcement authority previously held by the Fire Commission regarding these two rules is hereby transferred and solely vests in the Office of the State Fire Marshal.

(h) Notwithstanding any provision of this code to the contrary, on July 1, 2020, all power and authority for the licensing or certifications programs of “Home Inspectors”, and “Municipal, County, and Other Public Sector Building Code Officials, Building Code Inspectors and Plans Examiners”, are hereby transferred to the Office of the State Fire Marshal, and the State Fire Marshal shall have full authority over said programs, licenses, certifications, and all responsibilities thereof. Whenever in this code a reference is made to the State Fire Commission in relation to these Licensing or Certification Programs, it shall be construed to mean the State Fire Marshal.

§15A-10-3. Additional powers, duties and authority of State Fire Marshal relating to law enforcement; statewide contracts; penalties; authority to carry firearms.

(a) Enforcement of laws. — The State Fire Marshal, and any of his or her assistant fire marshals or deputy fire marshals, are fully authorized to enforce the fire code, the building code, this article, article 11 of this chapter, and any laws over of the state having to do with:

(1) Prevention of fire;

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

(3) The installation and maintenance of equipment of all sorts intended to extinguish, detect, and control fires;
(4) The means and adequacy of exit, in case of fire, from buildings and all other places in which persons work, live, or congregate, from time to time, for any purpose, except buildings used wholly as dwelling houses for no more than two families;

(5) The suppression of arson; and

(6) Any other thing necessary to carry into effect the provisions of this article and article 11 of this chapter including, but not limited to, confiscating any materials, chemicals, items, or personal property owned, possessed, or used in direct violation of the State Fire Code.

(b) Assistance upon request. — Upon request, the State Fire Marshal shall assist any chief of any recognized fire company or department. Upon the request of any federal law-enforcement officer, State Police officer, Natural Resources police officer, or any county or municipal law-enforcement officer, the State Fire Marshal, any deputy state fire marshal, or assistant state fire marshal employed pursuant to the provisions of this article and any person deputized pursuant to subsection (j) of this section may assist in the lawful execution of the requesting officer’s official duties: Provided, That the State Fire Marshal, or other person authorized to act under this subsection, shall at all times work under the direct supervision of the requesting officer.

(c) Enforcement of rules. — The State Fire Marshal shall enforce the rules promulgated by the State Fire Commission as authorized by this article and article 11 of this chapter.

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

(e) Right of entry. — The State Fire Marshal may, at any hour necessary, enter any building or premises, other than dwelling houses, for the purpose of making an inspection which he or she may consider necessary under the provisions of this article. The State Fire Marshal and
any deputy state fire marshal or assistant state fire marshal approved by the State Fire Marshal
may enter upon any property, or enter any building, structure or premises, including dwelling
houses during construction and prior to occupancy, for the purpose of ascertaining compliance
with the conditions set forth in any permit or license issued by the office of the State Fire Marshal
pursuant to §15A-10-7 or §29-3B-1 et seq. of this code.

(f) Investigations. — The State Fire Marshal may, at any time, investigate as to the origin
or circumstances of any fire or explosion or attempt to cause fire or explosion occurring in the
state. The State Fire Marshal has the authority at all times of the day or night, in performance of
the duties imposed by the provisions of this article, to investigate where any fires or explosions or
attempt to cause fires or explosions may have occurred, or which at the time may be burning.
Notwithstanding the above provisions of this subsection, prior to entering any building or premises
for the purposes of the investigation, the State Fire Marshal shall obtain a proper search warrant:
Provided, That a search warrant is not necessary where there is permissive waiver or the State
Fire Marshal is an invitee of the individual having legal custody and control of the property, building
or premises to be searched.

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

(h) Arrests; warrants. — The State Fire Marshal, any full-time deputy fire marshal, or any
full-time assistant fire marshal employed by the State Fire Marshal pursuant to this article is
hereby authorized and empowered and any person deputized pursuant to this article may be
authorized and empowered by the State Fire Marshal:

(1) To arrest any person anywhere within the confines of the State of West Virginia, or
have him or her arrested, for any violation of the arson-related offenses of §61-3-1 et seq. of this
code or of the explosives-related offenses of §61-3E-1 et seq. of said code: Provided, That any
and all persons so arrested shall be forthwith brought before the magistrate or circuit court;
Provided, however, That the State Fire Marshal, any full-time deputy fire marshal or any full-time
assistant fire marshal is authorized to arrest persons for violations of §61-5-17 of this code.

(2) To make complaint in writing before any court or officer having jurisdiction and obtain,
serve, and execute an arrest warrant when knowing or having reason to believe that anyone has
committed an offense under any provision of this article, of the arson-related offenses of §61-3-1
et seq. of this code or of the explosives-related offenses of §61-3E-1 et seq. of this code. Proper
return shall be made on all arrest warrants before the tribunal having jurisdiction over the violation.

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

(4) Any member of the West Virginia State Police, Natural Resources Police Officer, or
any county or municipal law-enforcement officer may assist, upon request, the State Fire Marshal
or any of his or her employees authorized to enforce the provisions of this section in any duties
for which the State Fire Marshal has jurisdiction.

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

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

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

(l) Report of losses by insurance companies. — Each fire insurance company or association doing business in this state, within 10 days after the adjustment of any loss sustained by it that exceeds $1,500, shall report to the State Fire Marshal information regarding the amount of insurance, the value of the property insured, and the amount of claim as adjusted. This report is in addition to any information required by the State Insurance Commissioner. Upon the request of the owner or insurer of any property destroyed or injured by fire or explosion, or in which an attempt to cause a fire or explosion may have occurred, the State Fire Marshal shall report in writing to the owner or insurer the result of the examination regarding the property.
(m) Issuance of permits and licenses. — The State Fire Marshal may issue permits, documents, and licenses in accordance with the provisions of this article or §29-3B-1 et seq. of this code: Provided, That unless otherwise provided, the State Fire Marshall shall take final action upon any completed permit applications within 30 days of receipt if the application is uncontested, or within 90 days if the application is contested. The State Fire Marshal may require any person who applies for a permit to use explosives, other than an applicant for a license to be a pyrotechnic operator under §29-3E-6 of this code, to be fingerprinted and to authorize the State Fire Marshal to conduct a criminal records check through the Criminal Identification Bureau of the West Virginia State Police and a national criminal history check through the Federal Bureau of Investigation. The results of any criminal records or criminal history check shall be sent to the State Fire Marshal.

(n) Issuance of citations for fire and life safety violations. — The State Fire Marshal, any deputy fire marshal, and any assistant fire marshal employed pursuant to this article, and any person deputized pursuant to subsection (j) of this section may be authorized by the State Fire Marshal to issue citations, in his or her jurisdiction, for fire and life safety violations of the State Fire Code and as provided for by the rules promulgated by the State Fire Commission in accordance with §15A-11-1 et seq. of this code: Provided, That a summary report of all citations issued pursuant to this section by persons deputized under subsection (j) of this section shall be forwarded monthly to the State Fire Marshal in the form and containing information as he or she may by rule require, including the violation for which the citation was issued, the date of issuance, the name of the person issuing the citation, and the person to whom the citation was issued. The State Fire Marshal may at any time revoke the authorization of a person deputized pursuant to subsection (j) of this section to issue citations, if in the opinion of the State Fire Marshal, the exercise of authority by the person is inappropriate.

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

1. Overcrowding places of public assembly;
2. Locked or blocked exits in public areas;
(3) Failure to abate a fire hazard;

(4) Blocking of fire lanes or fire department connections; and

(5) Tampering with, or rendering inoperable except during necessary maintenance or repairs, on-premise firefighting equipment, fire detection equipment, and fire alarm systems.

(o) Required training; liability coverage. — No person deputized pursuant to subsection (j) of this section may be authorized to issue a citation unless that person has satisfactorily completed the mandatory training as described in section 1 of this article, or a law-enforcement officer training course designed specifically for fire marshals. The course shall be approved by the Law-enforcement Training Subcommittee of the Governor’s Committee on Criminal Justice and Highway Safety and the State Fire Commission. In addition, no person deputized pursuant to subsection (j) of this section may be authorized to issue a citation until evidence of liability coverage of the person has been provided, in the case of a paid municipal fire department, by the municipality wherein the fire department is located, or in the case of a volunteer fire department, by the county commission of the county wherein the fire department is located or by the municipality served by the volunteer fire department and that evidence of liability coverage has been filed with the State Fire Marshal.

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

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

(2) The State Fire Marshal may develop uniform standards for equipment and supplies used by fire companies and departments in accordance with §5A-3-1 et seq. of this code.
(3) The State Fire Commission shall propose legislative rules for promulgation in accordance with §29A-3-1 et seq. of this code to effectuate the provisions of this subsection.

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

(r) The State Fire Marshal, any full-time deputy fire marshal, or any full-time assistant fire marshal employed by the State Fire Marshal pursuant to this article may carry a firearm while acting in the course of his or her official duties, if he or she has successfully completed a firearms training and certification program equivalent to that provided to officers attending the entry level law-enforcement certification course provided at the West Virginia State Police Academy. The person shall thereafter successfully complete an annual firearms qualification course equivalent to that required of certified law-enforcement officers as established by legislative rule. The State Fire Marshal may reimburse the person for the cost of the training and requalification.

§15A-10-4. **Enforcement standards.**

(a) In the enforcement of the State Building Code and State Fire Code, the State Fire Marshal: Shall provide compliance alternatives for historic structures as provided for in §29-1-5 of this code, which compliance alternatives shall take into account the historic integrity of the historic structures; and shall coordinate with the Director of the Archives and History Division the application of the rules of that division.

(b) In interpretation and application, the State Fire Code shall be held to be the minimum requirements for the safeguarding of life and property from the hazards of fire and explosion: *Provided,* That the State Fire Marshal shall provide compliance alternatives for historic structures and sites as provided in §29-1-5 of this code, which compliance alternatives shall take into account the historic integrity of the historic structures and sites. 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 Fire 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: Provided, That, on and after July 1, 2010, if a municipal or county fire ordinance or regulation of any agency thereof is more stringent or imposes a higher standard than is required by the State Fire Code, it must be presented for review and approval and sanctioned for use by the State Fire Commission. 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 fire rules by officials of the state, counties, municipalities and political subdivisions of the state.

§15A-10-5. General rule-making authority; appointment of advisory boards.

(a) The State Fire Marshal may propose rules for legislative approval, in accordance with the provisions of §29A-3-1 et seq. of this code, establishing state standards and fee schedules for the licensing, registration, certification, regulation and continuing education of persons which will conduct inspections relating to the State Building Code, which include, but are not limited to, building code officials, inspectors, plans examiners and home inspectors.

(b) The State Fire Marshal shall propose rules for legislative approval requiring applicants for home inspector licensing, registration or certification to submit to a state and national criminal history record check as set forth in this section and may deny licensing, registration or certification based upon the results of the criminal history record check.

(c) The State Fire Marshal 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 rules promulgated by the Fire Marshal.

§15A-10-6. Responsibilities of insurance companies in fire loss investigation.
(a) The State Fire Marshal or any deputy or assistant fire marshals under the authority of the fire marshal may request any insurance company investigating a fire loss of real or personal property to release any information in its possession relative to that loss. The company shall release the information and cooperate with any official authorized to request such information pursuant to this section. The information shall include, but is not limited to:

1. Any policy in force;
2. Any application for a policy;
3. Premium payment records;
4. History of previous claims; and
5. Material relating to the investigation of the loss, including statements of any person, proof of loss and any other relevant evidence.

(b) Any insurance company shall notify the State Fire Marshal, if it has reason to believe, based on its investigation of a fire loss to real or personal property, that the fire was caused by other than accidental means. The company shall furnish the State Fire Marshal with pertinent information acquired during its investigation and cooperate with the courts and administrative agencies of the state, and any official mentioned, or referred to, in subsection (a) of this section.

(c) In the absence of fraud, no insurance company or person who furnishes information on its behalf, shall be liable for any oral or written statement or any other action necessary to supply information required pursuant to this section.

(d) Any information furnished pursuant to this section shall be held in confidence, and is exempt from the provisions of §29B-1-1 et seq. of this code, until such time as its release may be required pursuant to a criminal proceeding.

(e) Any official mentioned, or referred to, in subsection (a) of this section may be required to testify as to any information in his or her possession regarding the fire loss of real or personal property in any civil action in which any person seeks recovery under a policy against an insurance company for the fire loss.
§15A-10-7. Fees.

(a) The State Fire Marshal is authorized to propose rules for legislative authorization pursuant to §29A-3-1 et seq. of this code to establish fees in accordance with the following:

(1) For blasting;

(2) For inspections of schools or day-care facilities;

(3) For inspections of hospitals or nursing homes;

(4) For inspections of personal care homes or board and care facilities;

(5) For inspections of residential occupancies;

(6) For inspections of mercantile occupancies;

(7) For business occupancies; and

(8) For inspections of assembly occupancies;

For purposes of this subdivision, an “assembly occupancy” includes, but is not limited to, all buildings or portions of buildings used for gathering together 50 or more persons for such purposes as deliberation, worship, entertainment, eating, drinking, amusement or awaiting transportation. For purposes of this section, a “Class C assembly facility” is one that accommodates 50 to 300 persons; a “Class B facility” is one which accommodates more than 300 persons but less than 1,000 persons; and a “Class A facility” is one which accommodates more than 1,000 persons.

(b) The State Fire Marshal may collect fees for the fire safety review of plans and specifications for new and existing construction. Fees shall be paid by the party or parties receiving the review.

(1) Structural barriers and fire safety plans review;

(2) Sprinkler system review;

(3) Fire alarm systems review;

(4) Range hood extinguishment system review;

(5) Carpet specifications;
(c) All fees authorized and collected pursuant to this article, §29-3B-1 et seq., §29-3C-1 et seq., and §29-3D-1 et seq. of this code shall be paid to the State Fire Marshal and thereafter deposited into the special account in the State Treasury known as the “Fire Marshal Fees Fund”. Expenditures from the fund shall be for the purposes set forth in this article and §29-3B-1 et seq., §29-3C-1 et seq., and §29-3D-1 et seq. of this code and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1 et seq. of this code and upon fulfillment of the provisions of §5A-2-1 et seq. of this code. Any balance remaining in the special account at the end of any fiscal year shall be reappropriated to the next fiscal year.

(d) If the owner or occupant of any occupancy arranges a time and place for an inspection with the State Fire Marshal and is not ready for the occupancy to be inspected at the appointed time and place, the owner or occupant thereof shall be charged the inspection fee provided in this section unless at least 48 hours prior to the scheduled inspection the owner or occupant requests the State Fire Marshal to reschedule the inspection. In the event a second inspection is required by the State Fire Marshal as a result of the owner or occupant failing to be ready for the inspection when the State Fire Marshal arrives, the State Fire Marshal shall charge the owner or occupant of the occupancy the inspection fees set forth above for each inspection trip required.


The State Fire Marshal shall transmit annually to the Governor an annual report, pursuant to §5-1-20 of this code. Said annual report shall include the activities of the State Fire Commission which are reportable pursuant to §5-1-20 of this code.

§15A-10-9. Maintenance of fire hazard; order for repair or demolition; order to contain notice to comply and right to appeal.

(a) No person shall erect, construct, reconstruct, alter, maintain or use any building, structure or equipment or use any land in such a way to endanger life or property from the hazards
of fire or explosion, or in violation of any regulation, rule, or any provision or any change thereof promulgated by the State Fire Marshal or State Fire Commission.

(b) Whenever the State Fire Marshal determines that any building or structure has been constructed, altered or repaired in a manner violating the State Building Code, or State Fire Code, prior to the commencement of such construction, alteration or repairs; or whenever he or she may determine that any building or structure constitutes a fire hazard by reason of want of repair, age or dilapidated or abandoned condition, or otherwise, and is so situated as to endanger other buildings and property; or whenever he or she may find in any building or upon any premises any combustible, flammable or explosive substance or material, or other conditions dangerous to the safety of persons occupying the building or premises and adjacent premises or property, he or she may make reasonable orders in writing, directed to the owner of such building, structure or premises, for the repair or demolition of such building or structure, or the removal of the combustible, flammable or explosive substance or material, as the case may be, and the remedying of any conditions found to be in violation of a regulation promulgated as aforesaid or to be dangerous to the safety of persons or property.

A true copy of every order of the State Fire Marshal as provided for in this section shall be filed in the county where the premises are totally or partially located, with the county clerk who shall index and record the order in the general lien book. Upon filing, the order constitutes notice of such proceedings to all persons or parties thereafter having dealings involving said property.

A statement of the expenses and administrative charges shall also be filed with the county clerk, recorded and indexed in the general lien book and upon filing, shall become a lien against the property. Thereafter a court supervised sale of the property to enforce the collection of the expenses and administrative charges may be prosecuted at the request of the State Fire Marshal, or the Attorney General.

Every order provided for in this section shall contain a notice that compliance therewith shall be required within a period of 30 days from the date of issuance thereof and also that any
person desiring to contest the validity of any such order may enter an appeal from such order to
the Office of Administrative Hearings established in §15A-9-1 et seq. of this code and then to the
circuit court in the county where the premises are totally or partially located as provided in this
article.

§15A-10-10. Service of repair or demolition order.

The written order of the State Fire Marshal made pursuant to §15A-10-9 of this code shall
be served by delivering a true copy thereof to such owner, or, if the owner is absent from the state
or his or her whereabouts be unknown to the State Fire Marshal, by mailing a true copy thereof
by certified mail to the said owner’s last known post-office address, or if no such address be
known, then by certified mail to said owner in care of general delivery at the post office serving
the community in which said premises lie; the delivering or mailing of such order to be
accomplished within five days from the date of the issuance of such order. And in the event it is
necessary to mail a copy of such order as aforesaid, the officer mailing the same shall also, within
five days from the date of issuance of such order, post a true copy thereof in a conspicuous place
on the door or other prominent entrance to said premises.

§15A-10-11. Work to be done at expense of owner or occupant upon failure to comply with
repair or demolition order; action to recover.

In the event any owner of any building or premises served with a copy of an order as
provided in §15A-10-9 and §15A-10-10 of this code shall fail substantially to comply with such
order within 30 days from the date of issuance thereof, or within 30 days after any appeal from
such order has been affirmed by the State Fire Marshal or by the court, the State Fire Marshal,
or his or her designee, may enter into and upon the premises affected by such order and cause
the building, structure or premises to be repaired, torn down, materials removed and all dangerous
conditions to be remedied, as the case may be, at the expense of the owner and with any
administrative charges as established by the State Fire Marshal also being borne by the owner,
and if such person shall fail or neglect to repay the State Fire Marshal the expense and
administrative charge thereby incurred by him or her, within 30 days after written demand shall
have been delivered or mailed to the said owner as provided in §15A-10-10 of this code, the State
Fire Marshal is hereby authorized to bring an action in the name of the state to recover such
expenses, with interest, and any administrative charge as established by the commission, in any
court of competent jurisdiction.

Upon a determination by the State Fire Marshal that the provisions of §15A-10-9 and
§15A-10-10 of this code have not been met, and that such property constitutes a hazard to health
or public safety, in lieu of initiating an order as therein provided, the State Fire Marshal may notify
the county commission or the county health officer in order that they may perform their duties
pursuant to section §7-1-3ff of this code. The State Fire Marshal may also, in lieu thereof, notify
the municipality where the property is located so that the municipality may perform its duties
pursuant to §8-12-14 of this code.

The State Fire Marshal may designate, pursuant to this section, a designee to accomplish
the building, structure or premises to be repaired, torn down, materials removed, and all
dangerous conditions to be remedied, as the case may be. The designee may include an
employee of the Fire Marshal, an agent of the Fire Marshal, a vendor, a Fire Department and its
employees or agents, or a governmental entity and its employees or agents. Any contract entered
into, pursuant to this section is exempt from the requirements of § 5A-3 -1 et seq. of this code.

§15A-10-12. Smoke detectors in one- and two-family dwellings; carbon monoxide
detectors in residential units, schools, and daycare facilities; penalty.

(a) An operational smoke detector shall be installed in the immediate vicinity of each
sleeping area within all one- and two-family dwellings, including any “manufactured home” as that
term is defined in §21-9-2(j) of this code. The smoke detector shall be capable of sensing visible
or invisible particles of combustion and shall meet the specifications and be installed as provided
in the current edition of the State Fire Code, and in the manufacturer’s specifications. When
activated, the smoke detector shall provide an alarm suitable to warn the occupants of the danger
of fire.

(b) The owner of each dwelling described in subsection (a) of this section shall provide, install, and replace the operational smoke detectors required by this section. To assure that the smoke detector continues to be operational, in each dwelling described in subsection (a) of this section which is not occupied by the owner of the dwelling, the tenant in any dwelling shall perform routine maintenance on the smoke detectors within the dwelling.

(c) Where a dwelling is not occupied by the owner and is occupied by an individual who is deaf or hard of hearing, the owner shall, upon written request by or on behalf of the individual, provide and install a smoke detector with a light signal sufficient to warn the deaf or hard of hearing individual of the danger of fire.

(d) An automatic fire sprinkler system installed in accordance with the current edition of the State Fire Code and the State Building Code may be provided in lieu of smoke detectors.

(e) After investigating a fire in any dwelling described in subsection (a) of this section, the local investigating authority shall issue to the owner a smoke detector installation order in the absence of the required smoke detectors.

(f) An operational single station carbon monoxide detector with a suitable alarm or a combination smoke detector and carbon monoxide detector, which shall be alternating current (AC) powered, either plugged directly in to an electrical outlet that is not controlled by a switch or hardwired into an alternating current (AC) electrical source, with battery backup, shall be installed, maintained, tested, repaired, or replaced, if necessary, in accordance with the manufacturer's direction:

(1) In any newly constructed residential unit which has a fuel-burning heating or cooking source including, but not limited to, an oil or gas furnace or stove:
(2) In any residential unit which is connected to a newly constructed building, including, but not limited to, a garage, storage shed, or barn, which has a fuel-burning heating or cooking source, including, but not limited to, an oil or gas furnace or stove;

(3) In either a common area where the general public has access or all rooms in which a person will be sleeping that are adjoining to and directly below and above all areas or rooms that contain permanently installed fuel-burning appliances and equipment that emit carbon monoxide as a byproduct of combustion located within all apartment buildings, boarding houses, dormitories, long-term care facilities, adult or child care facilities, assisted living facilities, one- and two-family dwellings intended to be rented or leased, hotels and motels.

(g) All single station carbon monoxide detectors with a suitable alarm or a combination smoke detector and carbon monoxide detectors shall be hardwired into an alternating current (AC) electrical source, with battery backup, when installed in all newly constructed apartment buildings, boarding houses, dormitories, hospitals, long-term care facilities, adult or child care facilities, assisted living facilities, one- and two-family dwellings intended to be rented or leased, hotels and motels.

(h) In any long-term care facility that is staffed on a 24-hour, seven day a week basis, the single station carbon monoxide detector with a suitable alarm or a combination smoke detector and carbon monoxide detector is only required to be installed in an area of the facility that permits the detector to be audible to the staff on duty.

(i) Carbon monoxide detectors shall be installed in every public or private school or daycare facility that uses a fuel-burning heating system or other fuel-burning device that produces combustion gases. A carbon monoxide detector shall be located in each area with a fuel-burning heating system or other fuel-burning device that produces combustion gases.

(j) Any person installing a carbon monoxide detector in a residential unit shall inform the owner, lessor, or the occupant or occupants of the residential unit of the dangers of carbon monoxide poisoning and instructions on the operation of the installed carbon monoxide detector.
(k) When repair or maintenance work is undertaken on a fuel-burning heating or cooking source or a venting system in an existing residential unit, the person making the repair or performing the maintenance shall inform the owner, lessor, or the occupant or occupants of the unit being served by the fuel-burning heating or cooking source or venting system of the dangers of carbon monoxide poisoning and recommend the installation of a carbon monoxide detector.

(l) Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, for a first offense, shall be fined $250. For a second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined $750. For a third and subsequent offenses, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined $2000.

(m) A violation of this section may not be considered to constitute evidence of negligence or contributory negligence or comparative negligence in any civil action or proceeding for damages.

(n) A violation of this section may not constitute a defense in any civil action or proceeding involving any insurance policy.

(o) Nothing in this section shall be construed to limit the rights of any political subdivision in this state to enact laws imposing upon owners of any dwelling or other building described in subsection (a) or (f) of this section a greater duty with regard to the installation, repair, and replacement of the smoke detectors or carbon monoxide detectors than is required by this section.


Notwithstanding any other provision of law to the contrary, live trees may be displayed in public buildings if the trees are decorated with U/L approved miniature lights, or are not decorated with electrical lights. The provisions of this section do not apply to public buildings used for education, health care, nursing homes or correctional facilities.

§15A-10-14. Safety standards for bed and breakfast establishments; findings.
(a) Findings. — Bed and breakfast establishments provide a unique and important contribution to the state, allowing visitors the opportunity to enjoy many of the aspects of our communities and state not available at hotels and motels and often provide vacationers access to overnight accommodation in areas of this state that would not otherwise be available. These operations continue to grow in number and importance in our state’s economy and must be promoted and encouraged by state and local government. Most of these facilities are older residences being converted to this use, and in many cases have architectural and historical significance, and, as with most small businesses, are begun with limited capital available for investment. Any fire safety code standards applicable to these facilities must be sensitive to this distinction and avoid placing a large financial burden on persons operating or planning to operate these facilities. Further, the personal safety of those who live in and visit these facilities is of paramount importance and requires that consideration be made to assure that adequate safety requirements are placed on these facilities to provide for the safety of visitors, residents and, in an emergency, responding firefighters and rescue workers.

(b) Definition. — For the purposes of this section, the term “bed and breakfast establishment” means a building occupied as a one-family dwelling unit that provides sleeping accommodations and breakfast to transient guests for a single fee and does not offer more than six guest rooms to no more than 12 guests.

(c) Fire code standards. — Notwithstanding any provision of this code to the contrary, every bed and breakfast establishment shall be exempt from provisions of fire safety code requirements which are contrary to the following standards:

(1) Each bed and breakfast shall have operational smoke alarms in all common areas, guest rooms and hallways and heat detectors as otherwise required by this code or rule of the Fire Commission. Battery-powered smoke alarms shall be permitted where the establishment has demonstrated that the testing, maintenance and battery replacement procedures will ensure
reliable power to the smoke alarms. Notwithstanding any provision of this code to the contrary, no smoking will be allowed inside a bed and breakfast establishment.

(2) Each bed and breakfast shall have operational hard-wired, battery-powered or plug-in emergency lighting that indicate available means of egress. Battery-powered or plug-in emergency lighting devices shall be permitted where the establishment has demonstrated that the testing, maintenance and battery replacement procedures will ensure reliable power to the emergency lighting devices.

(3) The State Fire Marshal shall permit bed and breakfast establishments that cannot readily comply with the requirements of a legislative rule, which may mandate the installation of a secondary means of escape or a sprinkler system, one year per floor of the establishment to comply with the requirements.

(4) All other provisions of the state fire safety code not inconsistent with this section and rules promulgated pursuant to subsection (d) of this section are applicable to bed and breakfast establishments.

(d) Legislative rules. — The State Fire Commission shall promulgate or amend an existing legislative rule, in accordance with the provisions of §29A-3-1 et seq. of this code, to effectuate the provisions of this section. The rule shall include a mechanism for the Fire Marshal to grant individual variances to bed and breakfast establishments which cannot otherwise meet provisions of the state fire safety code due to the historic and architectural significance of the establishment with due consideration of the economic limitations inherent in the operation of this type of small business.

(e) Historic preservation review. — The owner of a bed and breakfast may request the historical preservation section of the Division of Culture and History, pursuant to section eight, article one of this chapter, to consult with the owner and provide a recommendation to the Fire Marshal regarding the historic character of the structures used or proposed to be used as a bed and breakfast and any objections or concerns regarding any renovations or other changes
required by the Fire Marshal. If an appeal regarding a decision made by the Fire Marshal is made as provided by section eighteen of this article, the Marshal shall consider the recommendation of the historical preservation section when making a determination regarding the variance as provided for in subsection (d) of this section.


(a) Notwithstanding any statutory or regulatory provisions to the contrary, any person who installs, fuels, maintains or services any fuel gas system to a one or two family dwelling shall comply with rules promulgated by the Fire Commission relating to fuel gas systems.

(b) This section does not apply to any person who performs this work on a single family dwelling owned or leased, and occupied by that person. The personal exemption provided in this subsection is the same as the personal exemption provided in §29-3D-1, et seq of this code.

§15A-10-16. Additional remedies to abate, etc., fire hazards.

In case any building, structure or equipment is or is proposed to be erected, constructed, reconstructed, altered, maintained or used, or any land is or is proposed to be used in such a way to endanger life or property from the hazards of fire or explosion or in violation of this article, Article 11 of this chapter, the Fire Code or the Building Code, the State Fire Marshal or the Attorney General may, in addition to other remedies provided by law, institute injunction, mandamus, abatement or any other appropriate action or actions, proceedings to prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, alteration, maintenance or use.

§15A-10-17. License denial, limitation, suspension, or revocation.

(a) The State Fire Marshal shall deny, limit, suspend, or revoke a license issued if the provisions of this article, or if the rules promulgated pursuant to this article or article 11 of this chapter are violated.
(b) Before any such license is denied, limited, suspended, or revoked, however, written notice shall be given to the licensee, stating the grounds for such denial, limitation, suspension, or revocation.

(c) An applicant or licensee has 10 working days after receipt of the order denying, limiting, suspending, or revoking a license to request a formal hearing contesting the denial, limitation, suspension, or revocation of a license under this article. If a formal hearing is requested, the applicant or licensee and the secretary shall proceed in accordance with the provisions of §29A-5-1 et seq. of this code.

(d) If the license is denied, limited, suspended, or revoked, the license or certification holder shall cease and desist practices of their profession as of the effective date of the denial, limitation, suspension, or revocation. Any administrative appeal of such denial, limitation, suspension, or revocation shall not stay the denial, limitation, suspension, or revocation.

(e) A party aggrieved by a decision by the State Fire Marshal, may appeal such final decision to the Office of Administrative Hearings, pursuant to article 9 of this chapter, or may choose independent informal dispute resolution, as set forth in this article.


(a) A license or certification holder adversely affected by an order or citation of a deficient practice issued pursuant to this article, may request the independent informal dispute resolution process. A license or certificate holder may contest a cited deficiency as contrary to law or unwarranted by the facts or both.

(b) The State Fire Marshal has the authority to establish conference panels composed of three persons of the licensed or certified skill to decide the outcome of the independent informal dispute resolution process. One member shall be selected by the State Fire Marshal, one member shall be selected by the licensee or certificate holder, and one member shall be selected by agreement of both. If a vacancy occurs on the panel, the replacement for that member shall be made by the original individual who had selected such member. The members of the panel
shall serve without compensation. This panel shall hear the matter and render a decision. The licensee or certificate holder may not be accompanied by counsel during the independent informal dispute resolution conference.

(c) Upon appeal of a decision rendered by the State Fire Marshal, the panel shall hold an informal conference affirming, modifying or vacating an order of the State Fire Marshal, or issuing an order in the name of the State Fire Marshal. The panel shall forthwith notify the parties of its decision and as soon as practicable send written notices of its decision to the parties. The decision of the panel is final. The independent informal dispute resolution process is not a formal evidentiary proceeding.

(d) A party aggrieved by a decision of a panel may appeal pursuant to 29A-5-1 et seq. of this code.

(e) The State Fire Marshal shall promulgate a procedural rule to carry out the provisions of this section.

§15A-10-19. Establishment of demonstration buildings and equipment for educational instruction in fire prevention and protection; payment therefor.

The State Fire Marshal is authorized to establish for educational purposes in public and private schools and state educational institutions, demonstration buildings and equipment for fire prevention and protection, and such expenditures therefor shall be made from the funds appropriated therefor to the office of the State Fire Marshal.

§15A-10-20. False alarm of fire; penalties.

No person shall make, report, or disclose, by any means of written or verbal communication, aid or abet in such, any alarm of fire which he or she knows to be false at the time of making or turning in the alarm.

§15A-10-21. Tax on insurance companies.

Every insurance company doing business in this state, except Farmers’ Mutual Fire Insurance companies, shall pay to the State Insurance Commissioner annually on or before
March 1, in addition to the taxes now required by law to be paid by the companies, one half of one percent of the taxable premiums of the companies on insurance against the hazard of fire and on that portion of all other taxable premiums reasonably applicable to insurance against the hazard of fire which are included in other coverages, and received by it for insurance on property or risks in this state during the calendar year next preceding as shown by their annual statement under oath to the insurance department. The money so received by the State Insurance Commissioner is paid by him or her into the treasury and credited to the special revenue fund created in §15A-10-7 of this code.


(a) Any person who violates any regulations promulgated by the State Fire Commission as provided in article 11 of this chapter, or by the State Fire Marshal as provided in this article, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100 or confined in the county jail not more than 90 days, or both.

Each day during which any illegal erection, construction, reconstruction, alteration, maintenance or use continues after knowledge or official notice that it is illegal is a separate offense.

(b) Except as provided by the provisions of subsection (c) of this section, any person who violates the provisions of §15A-10-20 of this code shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined for a first offense not more than $100 or confined in jail for not more than 30 days or both fined and confined and for a second and each subsequent offense fined not less than $100 nor more than $500 or confined in jail for not less than 90 days nor more than one year, or both.

(c) Any person who violates the provisions of §15A-10-20 of this code with the intent to cause injury to the person of another, to cause destruction of the property of another or to divert the attention of law enforcement or fire personnel to help effectuate the commission of another crime shall be guilty of a felony and, upon conviction thereof, shall be confined in a state
correctional facility for not less than one nor more than three years, or fined not more than $500, or both.

(d) Any officer who knowingly and willfully fails to perform any duty required of him or her by this article or who violates any of its provisions is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $25 nor more than $50 for each failure or violation.

(e) Any person who violates any other provision of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100 or confined in jail not more than 90 days, or both.

Being in the interest of public safety, the provisions of this article shall be liberally construed.

If any section, subsection, subdivision, subparagraph, sentence or clause of this article is adjudged to be unconstitutional or invalid, such invalidation shall not affect the validity of the remaining portions of this article, and, to this end, the provisions of this article are hereby declared to be severable.

§15A-10-25. Awarding service weapon upon retirement of fire marshal or service weapon.
(a) Upon the retirement of a State Fire Marshal, any full-time deputy fire marshal or any full-time assistant fire marshal employed by the State Fire Marshal pursuant to this article, shall award to the retiring member his or her service weapon, without charge, upon determining:

(1) That the retiring employee is retiring honorably with at least 20 years of service; or

(2) The retiring employee is retiring with less than 20 years of service based upon a determination that the employee is totally physically disabled as a result of his or her service with the State Fire Marshal.

(b) Notwithstanding the provisions of subsection (a) of this section, the State Fire Marshal may not award a service weapon to any employee whom the State Fire Marshal knows is
prohibited from possessing a firearm, finds to be mentally incapacitated, or who constitutes a
danger to any person or the community.

(c) If a service weapon is taken out of service due to routine wear, the State Fire Marshal
may offer the service weapon for sale to any active or retired State Fire Marshal, assistant State
Fire Marshal or deputy State Fire Marshal, at fair market value, with the proceeds from any sales
used to offset the cost of new service weapons. The disposal of service weapons pursuant to this
subsection does not fall within the jurisdiction of the Purchasing Division of the Department of
Administration.

ARTICLE 11. FIRE COMMISSION.

§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 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 Chiefs 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 Chiefs
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.

(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. 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.


(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.


(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.

(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.
(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 Marshal. Additions constructed on a historic building are not excluded from complying with the State Building Code.


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, §29A-1 et seq. of this code.


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. And 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.


(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.

(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 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 record keeping; 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.

(e) 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.
(f) 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, has the authority to make expenditures of, or use of any tangible property, in order to effectuate the purposes of this article.

(g) 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 section nine of this article; and
5. The creation, operation and responsibilities of fire departments throughout the state.

(h) 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.

(i) The State Fire Commission may deny, suspend, or revoke certification of any fire department in the State of West Virginia if a fire department is not in compliance with all applicable laws, rules and regulations.
Appeals from any final decision of the Fire Commission shall be heard by the Office of Administrative Hearings pursuant to this chapter.


(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 fire fighting;

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

(C) Minimum performance standards the departments must 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 firefighting 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 must 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 must 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 firefighting 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.

§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) Definitions. — For the purposes of this section:

“Equipment and training grant” means a grant of money to a volunteer fire company or a part-volunteer fire department from the Fire Service Equipment and Training Fund created in §15A-11-11 of this code;

“Formula distribution” means a distribution of money to volunteer and part-volunteer fire companies or departments made pursuant to §33-3-14d, §33-3-33, and §33-12C-7 of this code; and

“State funds account” means a bank account established by a volunteer or part-volunteer fire company or department and maintained for the exclusive use and accounting of money from formula distributions and equipment and training grants.
(b) **Filing required documentation.** — Every volunteer and part-volunteer fire company or
department seeking to receive formula distributions or an equipment and training grant shall file
copies of bank statements and check images from the company’s or department’s state funds
account for the previous calendar year with the Legislative Auditor on or before February 1 of
each year.

(c) **Reviews and audits.** — The Legislative Auditor is authorized to conduct regular reviews
or audits of deposits and expenditures from formula distribution and equipment and training grant
funds by volunteer and part-volunteer fire companies or departments. The Legislative Auditor may
assign an employee or employees to perform audits or reviews at his or her direction. The State
Treasurer shall provide the Legislative Auditor information, in the manner designated by the
Legislative Auditor, concerning formula distributions and equipment and training grants paid to
volunteer or part-volunteer fire companies and departments. The volunteer or part-volunteer fire
company or department shall cooperate with the Legislative Auditor, the Legislative Auditor’s
employees, and the State Auditor in performing their duties under the laws of this state.

(d) **State Auditor.** — Whenever the State Auditor performs an audit of a volunteer or part-
volunteer fire company or department for any purpose, the Auditor shall also conduct an audit of
other state funds received by the company or department pursuant to §33-3-14d, §33-3-33, and
§33-12C-7 of this code. The Auditor shall send a copy of the audit to the Legislative Auditor. The
Legislative Auditor may accept an audit performed by the Auditor in lieu of performing an audit
under this section.

(e) **Withholding of funds.** — The Treasurer is authorized to withhold payment of a formula
distribution or an equipment and training grant from a volunteer or part-volunteer fire company or
department, when properly notified by the Legislative Auditor pursuant to this section, of any of
the following conditions:

1. Failure to file, in a timely manner, copies of bank statements and check images with
the Legislative Auditor;
(2) Failure to cooperate with a review or audit conducted by the Legislative Auditor;

(3) Misapplication of state funds; or

(4) Failure to file a report or a sworn statement of expenditures as required by §12-4-14 of this code for a state grant other than an equipment and training grant.

(f) Delinquency in filing. — If, after February 1, a volunteer or part-volunteer fire company or department has failed to file the required bank statements and check images with the Legislative Auditor, the Legislative Auditor shall notify the delinquent company or department at two separate times in writing of the delinquency and of possible forfeiture of its Fire Service Equipment and Training Fund distribution for the year. If the required bank statements and check images are not filed with the Legislative Auditor by March 31, unless the time period is extended by the Legislative Auditor, the Legislative Auditor shall then notify the Treasurer who shall withhold payment of any amount that would otherwise be distributed to the company or department. Prior to each subsequent quarterly disbursement of funds by the Treasurer, the Legislative Auditor shall notify each delinquent company or department twice per each quarter in which the company or department is delinquent. The Legislative Auditor may choose the method or methods of notification most likely to be received by the delinquent company or department.

(g) Noncooperation. — If, in the course of an audit or review by the Legislative Auditor, a volunteer or part-volunteer fire company or department fails to provide documentation of its accounts and expenditures in response to a request of the Legislative Auditor, the Legislative Auditor shall notify the State Treasurer who shall withhold payment of any amount that would otherwise be distributed to the company or department under the provisions of §33-3-14d, §33-3-33, and §33-12C-7 of this code until the Legislative Auditor informs the State Treasurer that the company or department has cooperated with the review or audit.

(h) Reporting of other grants. — Nothing in this section alters the duties and responsibilities of a volunteer or part-volunteer fire company or department imposed under §12-4-14 of this code if that company or department has received funds from any state grant program.
other than from the Fire Service Equipment and Training Fund. If the Legislative Auditor is notified
by a grantor that a volunteer or part-volunteer fire company or department has failed to file a
report or a sworn statement of expenditures for a state grant it received, the Legislative Auditor
shall notify the State Treasurer who shall withhold further distributions to the company or
department in the manner provided in this section.

(i) Escrow and forfeiture of moneys withheld. — The Volunteer Fire Department Audit
Account previously created in the Treasury is hereby continued. When the State Treasurer
receives notice to withhold the distribution of money to a volunteer or part-volunteer fire company
or department pursuant to this section, the Treasurer shall instead deposit the amounts withheld
into the Volunteer Fire Department Audit Account. If the Treasurer receives notice that the
volunteer or part-volunteer fire company or department has come into compliance in less than
one year from the date of deposit into this special revenue account, then the Treasurer shall
release and distribute the withheld amounts to the company or department, except that any
interest that has accrued thereon shall be credited to the general revenue of the state. If, after
one year from payment of the amount withheld into the special revenue account, the Legislative
Auditor informs the State Treasurer of continued noncooperation by the company or department,
the delinquent company or department forfeits the amounts withheld and the State Treasurer shall
pay the amounts withheld into Fire Service Equipment and Training Fund created in §29-3-5f of
this code.

(j) Misuse of state money. — If the Legislative Auditor determines that a volunteer or part-
volunteer fire company or department has used formula distribution money for purposes not
authorized by §8-15-8b of this code or has used equipment and training grant money for purposes
not authorized by the grant program, the Legislative Auditor shall give a written notice of
noncompliance to the company or department. If a volunteer or part-volunteer fire company or
department disagrees or disputes the finding, the company or department may contest the finding
by submitting a written objection to the Legislative Auditor within five working days of receipt of
the Legislative Auditor’s finding. The department or company shall then have 60 days from the
date of the Legislative Auditor’s finding to provide documentation to substantiate that the
expenditures were made for authorized purposes. If the volunteer or part-volunteer fire company
or department does not dispute the findings of the Legislative Auditor or if the company or
department is not able to substantiate an authorized purpose for the expenditure, the Legislative
Auditor shall notify the Treasurer of the amount of misapplied money and the Treasurer shall
deduct that amount from future distributions to that company or department until the full amount
of unauthorized expenditure is offset.

CHAPTER 19. AGRICULTURE.

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-4. Duties of commissioner.

The Commissioner of Agriculture shall perform the following duties:

(a) Devise means of advancing the agricultural interests of the state and, in the
performance of such duty, he or she shall have authority to call upon any state department, or
officer of the state or county, to cooperate in promoting the agricultural interests of the state. It
shall be the duty of any such department, or officer, upon request of the commissioner to render
the assistance desired;

(b) Promote and encourage the organization of such societies and associations as have
for their object the improvement and development of the state’s agricultural, horticultural and
kindred interests, especially in production, processing for market and distribution;

(c) Conduct cooperative work with the United States Department of Agriculture in
inspecting and determining the grade and condition of farm produce at collecting centers,
receiving centers and shipping points;
(d) Induce the investment of capital in, and immigration into, this state by the dissemination of information relative to the soil, climate, health, natural resources, market opportunities and advantages of the state;

(e) Investigate and report upon the kinds, conditions and extent of the mineral products of the state and their value;

(f) Take charge of the museum of the Department of Agriculture, collect, preserve and exhibit therein specimens of agricultural, horticultural and kindred products, products of the forests, minerals, flora and fauna of the state;

(g) Publish and distribute, from time to time, such reports and bulletins concerning agriculture, horticulture and kindred subjects as may be of value to the farmers of the state and, as conditions may demand, publish a handbook giving the resources of the several counties of the state, the varieties of soil and products, both mineral and vegetable, and the adaptability of the different sections of the state to the different branches of agriculture, horticulture and kindred interests;

(h) Submit a biennial report to the Governor and Legislature containing such information as to the operations of the department as may be helpful to the agricultural interests of the state, together with an itemized statement of all receipts and disbursements during the biennial period covered thereby and giving the name of every person employed during such period, the time employed and the amount paid each employee;

(i) Perform such other duties and exercise such other powers as are provided in this chapter and by general law;

(j) Enter into an agreement with the Secretary of the Department of Veterans’ Assistance to transfer without consideration all or part of the approximately 17 acres of Department of Agriculture property in Beckley, West Virginia, located adjacent to the Jackie Withrow Hospital which was formerly known as Pinecrest Hospital, for construction of a veterans skilled nursing facility; and
(k) Propose rules, including regulatory standards, for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code for the purpose of carrying out the requirements of this chapter; and

(l) Cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties.

ARTICLE 21A. CONSERVATION DISTRICTS.

§19-21A-4. State Conservation Committee; continuation.

(a) The State Conservation Committee is continued. It serves as an agency of the State and is to perform the functions conferred upon it in this article. The committee consists of the following 10 members:

(1) Four citizen members;

(2) The following ex officio members or his or her designee:

(A) The director of the state Cooperative Extension Service;

(B) The director of the State Agricultural and Forestry Experiment Station;

(C) The Secretary of the Department of Environmental Protection;

(D) The State Commissioner of Agriculture, who is the chairperson of the committee;

(E) The director of the Division of Forestry; and

(F) The president of the West Virginia Association of Conservation Districts.

(b) The Governor shall appoint, by and with the consent of the Senate, the four citizen members. Members shall be appointed for four-year terms, which are staggered in accordance with the initial appointments under prior enactment of this section. In the event of a vacancy, the appointment is for the unexpired term.

(c) The committee may invite the Secretary of Agriculture of the United States of America to appoint one person to serve with the committee as an advisory member.
(d) The committee shall keep a record of its official actions, shall adopt a seal, which shall be judicially noticed, and may perform those acts, hold public hearings, and adopt or propose for legislative approval rules necessary for the execution of its functions under this article.

(e) The State Conservation Committee may employ an administrative officer, technical experts and other agents and employees, permanent and temporary, as it requires. The administrative officer and support staff shall be known as the West Virginia Conservation Agency. The committee shall determine their qualifications, duties, and compensation. The committee may call upon the Attorney General of the state for legal services it requires. It may delegate to its chairperson, to one or more of its members, or to one or more agents or employees powers and duties it considers proper. The committee may secure necessary and suitable office accommodations and the necessary supplies and equipment. Upon request of the committee, for the purpose of carrying out any of its functions, the supervising officer of any state agency or of any state institution of learning shall, insofar as may be possible, under available appropriations and having due regard to the needs of the agency to which the request is directed, assign or detail to the committee members of the staff or personnel of the agency or institution of learning and make special reports, surveys or studies required by the committee.

(f) A member of the committee holds office so long as he or she retains the office by virtue of which he or she is serving on the committee. A majority of the committee is a quorum and the concurrence of a majority in any matter within their duties is required for its determination. The chairperson and members of the committee may receive no compensation for their services on the committee, but are entitled to reimbursement of expenses, including traveling expenses necessarily incurred in the discharge of their duties on the committee. The committee shall:

(1) Require the execution of surety bonds for all employees and officers who are entrusted with funds or property;

(2) Provide for the keeping of a full and accurate public record of all proceedings and of all resolutions, rules and orders issued or adopted; and
(3) Provide for an annual audit of the accounts of receipts and disbursements; and

(4) Cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties.

(g) In addition to other duties and powers conferred upon the State Conservation Committee, it may:

(1) Offer appropriate assistance to the supervisors of conservation districts, organized as provided in this article, in the carrying out of any of their powers and programs;

(2) Keep the supervisors of each of the several districts, organized under the provisions of this article, informed of the activities and experience of all other districts organized under this article and facilitate an interchange of advice and experience between the districts and cooperation between them;

(3) Coordinate the programs of the several conservation districts so far as this may be done by advice and consultation;

(4) Contract for services directly related to natural disaster recovery and stream restoration related to flooding, on an as needed basis;

(5) Comply with provisions of present and future federal aid statutes and regulations, including execution of contracts or agreements with, and cooperation in, programs of the United States government and any of its proper departments, bureaus, or agencies relating to natural disaster response, natural disaster recovery, or stream restoration related to flooding;

(6) Secure the cooperation and assistance of the United States and any of its agencies and of agencies of this state in the work of the districts;

(7) Disseminate information throughout the state concerning the activities and programs of the conservation districts and encourage the formation of the districts in areas where their organization is desirable;

(8) Administer a conservation grant program that provides financial assistance to conservation districts and others to promote approved conservation projects;
(9) Accept and receive donations, gifts, contributions, grants and appropriations in money, services, materials or otherwise from the United States or any of its agencies, from the State of West Virginia, or from other sources and use or expend the money, services, materials or other contributions in carrying out the policy and provisions of this article, including the right to allocate the money, services or materials in part to the various conservation districts created by this article in order to assist them in carrying on their operations; and

(10) Obtain options upon and acquire by purchase, exchange, lease, gift, grant, bequest, devise or otherwise any property, real or personal, or rights or interests in the property; maintain, administer, operate and improve any properties acquired; receive and retain income from the property and to expend the income as required for operation, maintenance, administration or improvement of the properties or in otherwise carrying out the purposes and provisions of this article; and sell, lease or otherwise dispose of any of its property or interests in the property in furtherance of the purposes and the provisions of this article. Money received from the sale of land acquired in the small watershed program shall be deposited in the special account of the State Conservation Committee and expended as provided in this article;

(11) Promulgate emergency and legislative rules to effectuate the provisions of this article as amended and reenacted by the Legislature during the 2018 regular session of the Legislature; and

(12) Upon a Governor’s proclamation declaring a state of emergency or federal disaster declaration, the state committee, its employees or agents may enter any water of the state for the purpose of removing debris and other obstruction which impede water flow and present additional flood hazards. The agency shall make reasonable efforts to secure the permission of the landowner before entering any private property in connection with these removal activities. The exercise of this limited authority does not constitute taking of private property or trespass. This authority shall continue for the duration of the Governor’s proclamation or the federal disaster declaration.
CHAPTER 20. NATURAL RESOURCES.

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-7. Additional powers, duties and services of director.

In addition to all other powers, duties and responsibilities granted and assigned to the director in this chapter and elsewhere by law, the director may:

(1) With the advice of the commission, prepare and administer, through the various divisions created by this chapter, a long-range comprehensive program for the conservation of the natural resources of the state which best effectuates the purpose of this chapter and which makes adequate provisions for the natural resources laws of the state;

(2) Sign and execute in the name of the state by the Division of Natural Resources any contract or agreement with the federal government or its departments or agencies, subdivisions of the state, corporations, associations, partnerships or individuals: Provided, That intergovernmental cooperative agreements and agreements with nongovernmental organizations in furtherance of providing a comprehensive program for the exploration, conservation, development, protection, enjoyment and use of the natural resources of the state are exempt from the provisions of §5A-3-1 et seq. of this code: Provided, however, That repair, renovation and rehabilitation of existing facilities, buildings, amenities and infrastructure necessary to protect public health or safety or to provide uninterrupted enjoyment and public use of state parks, state forests, wildlife management areas and state natural areas under the jurisdiction of the Division of Natural Resources are exempt from the provisions of §5A-3-1 et seq. of this code. Nothing in this section authorizes new construction of buildings and new construction of recreational facilities as defined in §20-5-4 of this code without complying with the provisions of §5A-3-1 et seq. of this code.

(3) Conduct research in improved conservation methods and disseminate information matters to the residents of the state;
(4) Conduct a continuous study and investigation of the habits of wildlife and, for purposes of control and protection, to classify by regulation the various species into such categories as may be established as necessary;

(5) Prescribe the locality in which the manner and method by which the various species of wildlife may be taken, or chased, unless otherwise specified by this chapter.

(6) Hold at least six meetings each year at such time and at such points within the state, as in the discretion of the Natural Resources Commission may appear to be necessary and proper for the purpose of giving interested persons in the various sections of the state an opportunity to be heard concerning open season for their respective areas, and report the results of the meetings to the Natural Resources Commission before the season and bag limits are fixed by it;

(7) Suspend open hunting season upon any or all wildlife in any or all counties of the state with the prior approval of the Governor in case of an emergency such as a drought, forest fire hazard or epizootic disease among wildlife. The suspension shall continue during the existence of the emergency and until rescinded by the director. Suspension, or reopening after such suspension, of open seasons may be made upon 24 hours' notice by delivery of a copy of the order of suspension or reopening to the wire press agencies at the state capitol;

(8) Supervise the fiscal affairs and responsibilities of the division;

(9) Designate such localities as he or she shall determine to be necessary and desirable for the perpetuation of any species of wildlife;

(10) Enter private lands to make surveys or inspections for conservation purposes, to investigate for violations of provisions of this chapter, to serve and execute warrants and processes, to make arrests and to otherwise effectively enforce the provisions of this chapter;

(11) Acquire for the state in the name of the Division of Natural Resources by purchase, condemnation, lease or agreement, or accept or reject for the state, in the name of the Division of Natural Resources, gifts, donations, contributions, bequests or devises of money, security or
property, both real and personal, and any interest in such property, including lands and waters, which he or she deems suitable for the following purposes:

(a) For state forests for the purpose of growing timber, demonstrating forestry, furnishing or protecting watersheds or providing public recreation;

(b) For state parks or recreation areas for the purpose of preserving scenic, aesthetic, scientific, cultural, archaeological or historical values or natural wonders, or providing public recreation;

(c) For public hunting, trapping or fishing grounds or waters for the purpose of providing areas in which the public may hunt, trap or fish, as permitted by the provisions of this chapter and the rules issued hereunder;

(d) For fish hatcheries, game farms, wildlife research areas and feeding stations;

(e) For the extension and consolidation of lands or waters suitable for the above purposes by exchange of other lands or waters under his or her supervision;

(f) For such other purposes as may be necessary to carry out the provisions of this chapter;

(12) Capture, propagate, transport, sell or exchange any species of wildlife as may be necessary to carry out the provisions of this chapter;

(13) Sell timber for not less than the value thereof, as appraised by a qualified appraiser appointed by the director, from all lands under the jurisdiction and control of the director, except those lands that are designated as state parks and those in the Kanawha State Forest. The appraisal shall be made within a reasonable time prior to any sale, reduced to writing, filed in the office of the director and shall be available for public inspection. The director must obtain the written permission of the Governor to sell timber when the appraised value is more than $5,000. The director shall receive sealed bids therefor, after notice by publication as a Class II legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code and the publication area for the publication shall be each county in which the timber is located. The timber so advertised shall be sold at not less than the appraised value to the highest responsible bidder,
who shall give bond for the proper performance of the sales contract as the director shall
designate; but the director may reject any and all bids and re-advertise for bids. If the foregoing
provisions of this section have been complied with and no bid equal to or in excess of the
appraised value of the timber is received, the director may, at any time, during a period of six
months after the opening of the bids, sell the timber in such manner as he or she deems
appropriate, but the sale price may not be less than the appraised value of the timber advertised.
No contract for sale of timber made pursuant to this section may extend for a period of more than
10 years. And all contracts heretofore entered into by the state for the sale of timber may not be
validated by this section if a contract is otherwise invalid. The proceeds arising from the sale of
the timber so sold shall be paid to the Treasurer of the State of West Virginia and shall be credited
to the division and used exclusively for the purposes of this chapter: Provided, That nothing
contained herein may prohibit the sale of timber which otherwise would be removed from right-of-
way's rights-of-way necessary for and strictly incidental to the extraction of minerals;
(14) Sell or lease, with the approval in writing of the Governor, coal, oil, gas, sand, gravel
and any other minerals that may be found in the lands under the jurisdiction and control of the
director, except those lands that are designated as state parks. The director, before making sale
or lease thereof, shall receive sealed bids therefor, after notice by publication as a Class II legal
advertisement in compliance with the provisions of §59-3-1 et seq. of this code, and the
publication area for such publication shall be each county in which such lands are located. The
minerals so advertised shall be sold or leased to the highest responsible bidder, who shall give
bond for the proper performance of the sales contract or lease as the director shall designate; but
the director may reject any and all bids and re-advertise for bids. The proceeds arising from any
such sale or lease shall be paid to the Treasurer of the State of West Virginia and shall be credited
to the division and used exclusively for the purposes of this chapter;
(15) Exercise the powers granted by this chapter for the protection of forests and regulate fires and smoking in the woods or in their proximity at such times and in such localities as may be necessary to reduce the danger of forest fires;

(16) Cooperate with departments and agencies of state, local and federal governments in the conservation of natural resources and the beautification of the state;

(17) Report to the Governor each year all information relative to the operation and functions of the division and the director shall make such other reports and recommendations as may be required by the Governor, including an annual financial report covering all receipts and disbursements of the division for each fiscal year, and he or she shall deliver the report to the Governor on or before December 1, next after the end of the fiscal year so covered. A copy of the report shall be delivered to each house of the Legislature when convened in January next following;

(18) Keep a complete and accurate record of all proceedings, record and file all bonds and contracts taken or entered into and assume responsibility for the custody and preservation of all papers and documents pertaining to his or her office, except as otherwise provided by law;

(19) Offer and pay, in his or her discretion, rewards for information respecting the violation, or for the apprehension and conviction of any violators, of any of the provisions of this chapter;

(20) Require such reports as he or she may determine to be necessary from any person issued a license or permit under the provisions of this chapter, but no person may be required to disclose secret processes or confidential data of competitive significance;

(21) Purchase as provided by law all equipment necessary for the conduct of the division;

(22) Conduct and encourage research designed to further new and more extensive uses of the natural resources of this state and to publicize the findings of the research;

(23) Encourage and cooperate with other public and private organizations or groups in their efforts to publicize the attractions of the state including, completing the feasibility study for the Beech Fork State Park Lodge as follows:
(A) The director shall convene, prior to October 1, 2019, two public hearings:

(i) An initial public hearing shall be for the purpose of seeking public input regarding options for the construction of a lodge and a conference center, including all available public, private or public-private partnership (PPP) funding and financing options; and

(ii) A subsequent public hearing at which the feasibility study and any recommendation shall be available for public comment;

(B) The public hearings required by this subdivision must be held in a suitable location reasonably close to Beech Fork State Park so as to accommodate public participation from the citizens of Cabell, Lincoln, and Wayne counties; and

(C) Upon completion of the feasibility study it shall be submitted by the director to the Joint Committee on Government and Finance on or before December 1, 2019;

(24) Accept and expend, without the necessity of appropriation by the Legislature, any gift or grant of money made to the division for all purposes specified in this chapter and he or she shall account for and report on all such receipts and expenditures to the Governor;

(25) Cooperate with the state historian and other appropriate state agencies in conducting research with reference to the establishment of state parks and monuments of historic, scenic and recreational value and to take such steps as may be necessary in establishing the monuments or parks as he or she deems advisable;

(26) Maintain in his or her office at all times, properly indexed by subject matter and also in chronological sequence, all rules made or issued under the authority of this chapter. The records shall be available for public inspection on all business days during the business hours of working days;

(27) Delegate the powers and duties of his or her office, except the power to execute contracts not related to land and stream management, to appointees and employees of the division, who shall act under the direction and supervision of the director and for whose acts he or she shall be responsible;
(28) Conduct schools, institutions and other educational programs, apart from or in cooperation with other governmental agencies, for instruction and training in all phases of the natural resources programs of the state;

(29) Authorize the payment of all or any part of the reasonable expenses incurred by an employee of the division in moving his or her household furniture and effects as a result of a reassignment of the employee: Provided, That no part of the moving expenses of any one such employee may be paid more frequently than once in 12 months;

(30) Establishing procedures and fee schedule for individuals applying for limited permit hunts; and

(31) Promulgate rules, in accordance with the provisions of §29A-1-1 et seq. of this code, to implement and make effective the powers and duties vested in him or her by the provisions of this chapter and take such other steps as may be necessary in his or her discretion for the proper and effective enforcement of the provisions of this chapter; and,

(32) Cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 1. DEPARTMENT OF ENVIRONMENTAL PROTECTION.

§22-1-6. Secretary of the Department of Environmental Protection.

(a) The secretary is the chief executive officer of the department. Subject to section seven of this article and other provisions of law, the secretary shall organize the department into such offices, sections, agencies and other units of activity as may be found by the secretary to be desirable for the orderly, efficient and economical administration of the department and for the accomplishment of its objects and purposes. The secretary may appoint a deputy secretary, chief of staff, assistants, hearing officers, clerks, stenographers and other officers, technical personnel
and employees needed for the operation of the department and may prescribe their powers and
duties and fix their compensation within amounts appropriated.

(b) The secretary has the power to and may designate supervisory officers or other officers
or employees of the department to substitute for him or her on any board or commission
established under this code or to sit in his or her place in any hearings, appeals, meetings or other
activities with such substitute having the same powers, duties, authority and responsibility as the
secretary. The secretary has the power to delegate, as he or she considers appropriate, to
supervisory officers or other officers or employees of the department his or her powers, duties,
authority and responsibility relating to issuing permits, hiring and training inspectors and other
employees of the department, conducting hearings and appeals and such other duties and
functions set forth in this chapter or elsewhere in this code.

(c) The secretary has responsibility for the conduct of the intergovernmental relations of
the department, including assuring:

(1) That the department carries out its functions in a manner which supplements and
complements the environmental policies, programs and procedures of the federal government,
other state governments and other instrumentalities of this state; and

(2) That appropriate officers and employees of the department consult with individuals
responsible for making policy relating to environmental issues in the federal government, other
state governments and other instrumentalities of this state concerning differences over
environmental policies, programs and procedures and concerning the impact of statutory law and
rules upon the environment of this state.

(d) In addition to other powers, duties and responsibilities granted and assigned to the
secretary by this chapter, the secretary is authorized and empowered to:

(1) Sign and execute in the name of the state by the Department of Environmental
Protection any contract or agreement with the federal government or its departments or agencies,
subdivisions of the state, corporations, associations, partnerships or individuals: Provided, That
the powers granted to the secretary to enter into agreements or contracts and to make expenditures and obligations of public funds under this subdivision may not exceed or be interpreted as authority to exceed the powers granted by the Legislature to the various commissioners, directors or board members of the various departments, agencies or boards that comprise and are incorporated into each secretary’s department pursuant to the provisions of chapter five-f of this code;

(2) Conduct research in improved environmental protection methods and disseminate information to the citizens of this state;

(3) Enter private lands to make surveys and inspections for environmental protection purposes; to investigate for violations of statutes or rules which the department is charged with enforcing; to serve and execute warrants and processes; to make arrests; issue orders, which for the purposes of this chapter include consent agreements; and to otherwise enforce the statutes or rules which the department is charged with enforcing;

(4) Require any applicant or holder of a permit to install, establish, modify, operate or close a solid waste facility to furnish the fingerprints of the applicant or permittee; any officer, director or manager of the applicant or permittee; any person owning a five percent or more interest, beneficial or otherwise, in the applicant’s or permittee’s business; or any other person conducting or managing the affairs of the applicant or permittee or of the proposed licensed premises, in whole or in part. These fingerprints may be used to obtain and review any police record for the purposes set may be relevant pursuant to §20-15-5 of this code, and to use the fingerprints furnished to conduct a criminal records check through the Criminal Identification Bureau of the West Virginia State Police and a national criminal history check through the Federal Bureau of Investigation. The results of the checks shall be provided to the secretary.

(5) Acquire for the state in the name of the Department of Environmental Protection by purchase, condemnation, lease or agreement, or accept or reject for the state, in the name of the
Department of Environmental Protection, gifts, donations, contributions, bequests or devises of money, security or property, both real and personal, and any interest in property;

(6) Provide for workshops, training programs and other educational programs, apart from or in cooperation with other governmental agencies, necessary to ensure adequate standards of public service in the department. The secretary may provide for technical training and specialized instruction of any employee. Approved educational programs, training and instruction time may be compensated for as a part of regular employment. The secretary is authorized to pay out of federal or state funds, or both, as such funds are available, fees and expenses incidental to the educational programs, training and instruction. Eligibility for participation by employees shall be in accordance with guidelines established by the secretary;

(7) Issue certifications required under 33 U.S.C. §1341 of the federal Clean Water Act and enter into agreements in accordance with the provisions of section seven-a, article eleven of this chapter. Prior to issuing any certification the secretary shall solicit from the Division of Natural Resources reports and comments concerning the possible certification. The Division of Natural Resources shall direct the reports and comments to the secretary for consideration; and

(8) Notwithstanding any provisions of this code to the contrary, employ in-house counsel to perform all legal services for the secretary and the department, including, but not limited to, representing the secretary, any chief, the department or any office thereof in any administrative proceeding or in any proceeding in any state or federal court. Additionally, the secretary may call upon the Attorney General for legal assistance and representation as provided by law; and

(9) Cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties.

(e) The secretary shall be appointed by the Governor, by and with the advice and consent of the Senate, and serves at the will and pleasure of the Governor.

(f) At the time of his or her initial appointment, the secretary must be at least 30 years old and shall be selected with special reference and consideration given to his or her administrative
experience and ability, to his or her demonstrated interest in the effective and responsible
regulation of the energy industry and the conservation and wise use of natural resources. The
secretary must have at least a bachelor’s degree in a related field and at least three years of
experience in a position of responsible charge in at least one discipline relating to the duties and
responsibilities for which the secretary will be responsible upon assumption of the office. The
secretary may not be a candidate for or hold any other public office, may not be a member of any
political party committee and shall immediately forfeit and vacate his or her office as secretary in
the event he or she becomes a candidate for or accepts appointment to any other public office or
political party committee.

(g) The secretary shall receive an annual salary as provided in §6-7-2a of this code and
is allowed and shall be paid necessary expenses incident to the performance of his or her official
duties. Prior to the assumption of the duties of his or her office, the secretary shall take and
subscribe to the oath required of public officers prescribed by section five, article IV of the
Constitution of West Virginia and shall execute a bond, with surety approved by the Governor, in
the penal sum of $10,000, which executed oath and bond will be filed in the Office of the Secretary
of State. Premiums on the bond shall be paid from the department funds.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-1. Short title.

[Repealed]

§29-3-2. Legislative findings and declaration of policy.

[Repealed]

§29-3-3. State Fire Commission created; composition; qualifications; appointment; terms
of office; removal; vacancies; compensation and expenses.

[Repealed]
§29-3-4. Chairman; vice chairman; meetings; quorum.

§29-3-5. Promulgation of rules and State Fire Code.

§29-3-5a. Hazardous substance emergency response training programs.

§29-3-5b. Promulgation of rules and statewide building code.

§29-3-5c. Liquified petroleum gas systems.

§29-3-5d. Volunteer firefighters’ training.

§29-3-5e. Courtesy certification of firefighters in surrounding states to serve as volunteer firefighter.

§29-3-5f. Fire Service Equipment and Training Fund; creation of fire service equipment and training grant.

§29-3-6. Public hearings and notice.

§29-3-7. Commission’s powers in conduct of public hearing.


§29-3-10. State fire marshals office transferred to state Fire Commission; powers and duties of state Insurance Commissioner with respect to fire marshal terminated; operation of commission prior to adoption of code.

§29-3-11. Appointment of State Fire Marshal; term of office; removal; salary; qualifications; responsibilities; employees; equipment.

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

§29-3-12a. Responsibilities of insurance companies in fire loss investigation.

§29-3-12b. Fees.

§29-3-13. Annual reports.

§29-3-14. Maintenance of fire hazard; order for repair or demolition; order to contain notice to comply and right to appeal.

§29-3-15. Service of repair or demolition order.

§29-3-16. Work to be done at expense of owner or occupant upon failure to comply with repair or demolition order; action to recover.

§29-3-16a. Smoke detectors in one- and two-family dwellings; carbon monoxide detectors in residential units, schools, and daycare facilities; penalty.
§29-3-16b. Use of live trees in public buildings; exceptions.

§29-3-16c. Safety standards for bed and breakfast establishments; findings.

§29-3-16d. Performance of installation of propane gas systems.

§29-3-17. Additional remedies to abate, etc., fire hazards.

§29-3-18. Appellate procedure generally.

§29-3-19. Establishment of demonstration buildings and equipment for educational instruction in fire prevention and protection; payment therefor.

§29-3-21. False alarm of fire; penalties.

§29-3-22. Tax on insurance companies.

§29-3-27. Penalties.

§29-3-28. Transfer of certain state employees; perpetuation of rules, regulations and orders.

§29-3-29. Construction.

§29-3-30. Severability.
§29-3-32. Awarding service weapon upon retirement of fire marshal or service weapon.

[Repealed]

ARTICLE 31. STATE RESILIENCY AND FLOOD PROTECTION PLAN ACT.

§29-31-2. State Resiliency Office

(a) It is determined that a state authority is required to provide a coordinated effort for emergency and disaster planning, response, recovery, and resiliency between government agencies, first responders, and all other entities to reduce the loss of life and property, lessen the impact of future disasters, respond quickly to save lives, protect property and the environment, meet basic human needs, and provide economic growth and resilience in the aftermath of an incident. Therefore, the State Resiliency Office is hereby created. The office shall be organized within the Development Office in the Department of Commerce Office of the Governor. The Office will serve as the recipient of disaster recovery and resiliency funds, excluding federal Stafford Act funds, and the coordinating agency of recovery and resiliency efforts, including matching funds for other disaster recovery programs, excluding those funds and efforts under the direct control of the State Resiliency Officer pursuant to §15-5-4b and §15-5-24 of this code for a particular event.

(b) (1) The State Resiliency Office Board is also established and shall consist of the following eight members: the Secretary of the Department of Commerce or his or her designee; the Director of the Division of Natural Resources or his or her designee; the Secretary of the Department of Environmental Protection or his or her designee; the Executive Director of the State Conservation Agency or his or her designee; the President of the West Virginia Emergency Management Council or his or her designee; the Secretary of the Department of Military Affairs and Public Safety Homeland Security or his or her designee; the Secretary of Transportation or his or her designee; the Adjutant General of the West Virginia National Guard or his or her designee; and the Director of the Division of Homeland Security and Emergency Management.
within the Department of Military Affairs and Public Safety Homeland Security or his or her
designee; two non-voting members of the West Virginia Senate, to be appointed by the President
of the Senate; and two non-voting members of the West Virginia House of Delegates, to be
appointed by the Speaker of the House of Delegates.

(2) A member of the Board holds office so long as he or she retains the office or position
by virtue of which he or she is serving on the Board. A majority of the Board is a quorum and the
concurrence of a Board in any matter within their duties is required for its determination. The
members of the Board may receive no compensation for their services on the committee, but are
entitled to reimbursement of expenses, including traveling expenses necessarily incurred in the
discharge of their duties on the Board.

(3) The Board shall:

(A) Provide for the keeping of a full and accurate record of all proceedings and of all
resolutions, rules, and orders issued or adopted and of its other official actions;
(B) Shall adopt a seal, which shall be judicially noticed;
(C) Provide for an annual audit of the accounts of receipts and disbursements of the State
Resiliency Office; and
(D) Perform those acts necessary for the execution of its functions under this article.

(c) (1) The Secretary of the Department of Commerce State Resiliency Officer shall be
the chair of the State Resiliency Office Board, and, shall be appointed by the Governor with the
advice and consent of the Senate. In the absence of the chair, any member designated by the
members present may act as chair.

(2) The State Resiliency Officer shall be vested with the authority and duties prescribed to
the office within this article.

(3) The State Resiliency Officer shall be a person who has:
(A) Have at least five years managerial or strategic planning experience in matters relating to flood control and hazard mitigation or, alternatively, in disaster recovery, emergency management, or emergency response;

(B) Have at least a level IS-800 NIMS certification: Provided, That if the State Resiliency Officer does not have a level IS-800 NIMS certification when appointed, he or she shall become certified within one year following appointment; and

(C) Be thoroughly knowledgeable in matters relating to flood control and hazard mitigation or alternatively, in matters relating to disaster recovery, emergency management, and emergency response.

(4) The State Resiliency Officer shall employ a deputy who shall assist the State Resiliency Officer in carrying out the duties of the office. The State Resiliency Office Board shall meet and submit a list of no more than five nor less than two of the most qualified persons to the Governor within 90 days of the occurrence of a vacancy in this deputy position. This deputy shall be appointed by the Governor with the advice and consent of the Senate. Applicants for the deputy position shall at a minimum:

(A) Have at least three years managerial or strategic planning experience in matters relating to flood control and hazard mitigation or, alternatively, in disaster recovery, emergency management, or emergency response;

(B) Have at least a level E/L 950 NIMS certification: Provided, That if the deputy State Resiliency Officer does not have a level E/L 950 NIMS certification when appointed, he or she shall become certified within one year following appointment; and

(C) Be thoroughly knowledgeable in matters relating to flood control and hazard mitigation, or alternatively, in matters relating to disaster recovery, emergency management, and emergency response; and

(D) If the State Resiliency Officer has his or her primary experience in flood control and hazard mitigation then his or her deputy must have experience in disaster recovery, emergency
management, or emergency response; alternatively, if the State Resiliency Officer has his or her primary experience in disaster recovery, emergency management, or emergency response then his or her deputy must have experience in flood control and hazard mitigation.

(d) The board shall meet no less than once each calendar quarter at the time and place designated by the chair and the board shall work together with the State Resiliency Officer to fulfill the mission given to the State Resiliency Office to coordinate efforts for emergency and disaster planning, response, recovery, and resiliency between government agencies, first responders and others.

The Board will assist and advise the State Resiliency Officer in developing policies to accomplish, at a minimum, the following specific tasks in order to achieve these goals, and will assist the State Resiliency Officer in devising plans and developing procedures which will ensure that agencies and political subdivisions of the State carry out these following specific tasks:

(1) Establishing mechanisms to coordinate resiliency related programs and activities among state agencies and to encourage intergovernmental as well as cross-sector coordination and collaboration;

(2) Evaluate the state’s role in construction permitting process and identify opportunities to expedite the permitting process post-disaster and for selected types of mitigation and adaptation actions;

(3) Conduct a review of laws and regulations to identify those that create or add to risk, or interfere with the ability to reduce risk or to improve resiliency;

(4) Conduct an inventory of relevant critical planned activity by state agencies to determine their proposed impact upon resiliency;

(5) Make recommendations regarding practical steps that can be taken to improve efficiencies, and to pool and leverage resources to improve resiliency;

(6) Identify, prioritize and evaluate issues affecting implementation of mitigation and adaptation actions, including but limited to, the effect of loss of land in context of zoning and other
(7) Ensure all counties and municipalities have up to date Hazard Mitigation Plans and Local Comprehensive Disaster Plans that are consistent with and coordinated to the state’s Hazard Mitigation Plans and Comprehensive Disaster Plans; including, but not limited to, assisting them in developing planning guidance for cities and towns to complete and/or update Hazard Mitigation Plans; providing technical assistance to help counties and municipalities meet these standards; and provide notice to counties and municipalities of funding opportunities to implement projects outlined in their Hazard Mitigation Plans;

(8) Conduct risk assessments, including but not limited to, examining state highway corridors and associated drainage systems for stormwater inundation, impacts of downed trees, effects on utilities, etc.; assessment of known stormwater impacts between state highways and municipal drainage systems, options to eliminate or mitigate such impact; a housing vulnerability assessment for structures in riparian zones; and a vulnerability assessment of the State’s historic and cultural resources;

(9) Establish working groups that will conduct assessments for varied sectors of the economy, such as small business, ports and river traffic, agriculture, manufacturing, and tourism; these assessments should address vulnerabilities and economic impacts, options to mitigate impacts, options to improve preparedness, response and recovery, and economic opportunities associated with design, engineering, technological and other skills and capabilities that can improve resilience;

(10) Establish emergency permitting procedures to expedite issuance of state permits following disasters, and develop guidance (model procedures) for political subdivisions to follow; and
(11) Establish a model long-term recovery plan that would be activated after catastrophic events.

All decisions of the board shall be decided by a majority vote of the members.

(d) The chair State Resiliency Office shall provide adequate staff from their respective office, to ensure the meetings of the board are properly noticed, meetings of the board are facilitated, board meeting minutes are taken, records and correspondence kept and that reports of the board are produced in a timely manner.

(f) Notwithstanding any other provisions of this Code:

(1) The meetings of the board are not subject to the provisions of § 6-9A et seq. of this Code.

(2) The following are exempt from public disclosure under the provisions of § 29B-1, et seq of this code:

(A) all deliberations of the board;
(B) the materials, in any medium, including hard copy and electronic, placed in the custody of the board as a result of any of its duties; and
(C) all records of the board, in the possession of the board, and generated by the board;

due to their falling under several exceptions to public disclosure; including; but not limited to; that for security or disaster recovery plans and risk assessments.

§29-31-3. Authority of State Resiliency Office; authority of board and State Resiliency Officer.

The State Resiliency Office, through its board may will coordinate the state’s disaster response mission and the State Resiliency Officer serve as the primary representative of the Governor. The State Resiliency Officer shall, upon the order and direction of the Governor, act on behalf of the Governor in the event of the proclamation of the existence of a state of emergency or state of preparedness under the provisions of §15-5-6 of this code. The State Resiliency Officer will assist and advise the Governor on all disaster response issues and serve as a liaison between
the Governor's office, and all other parties, whether state, federal, public or private to further the purposes of this article. The State Resiliency Officer will:

1. Serve as coordinator of all economic and community resiliency planning and implementation efforts, including, but not limited to, flood protection programs and activities in the state;

2. Annually coordinate an annual review of the state flood protection plan and update the plan no less than biannually;

3. Recommend legislation to reduce or mitigate flood damage;

4. Report to the Joint Legislative Committee on Flooding at least quarterly;

5. Catalog, maintain, and monitor a listing of current and proposed capital expenditures to reduce or mitigate flood damage and other hazards, and other useful and desirable resiliency efforts;

6. Coordinate planning of flood projects with federal agencies;

7. Improve professional management of flood plains;

8. Provide education and outreach on flooding issues to the citizens of this state;

9. Establish a single website integrating all agency flood information;

10. Monitor federal funds and initiatives that become available for disaster recovery and economic and community resiliency or other flood or hazard mitigation and to direct expenditure on behalf of the Governor;

11. Pursue additional funds and resources to assist not only with long-term recovery efforts but also long-term community and statewide resiliency efforts;

12. Coordinate, integrate and expand planning efforts in the state for hazard mitigation, long-term disaster recovery, and economic diversification;

13. Coordinate long-term disaster recovery efforts in response to disasters as they occur;

14. Establish and facilitate regular communication between federal, state, local, and private sector agencies and organizations to further economic and disaster resilience; and
(15) Receive resources, monetary or otherwise, from any other governmental entity and disburse those resources to effectuate the purposes of this article;

(16) Execute cooperative agreements, where appropriate, between the State Resiliency Office and the federal and/or state governments;

(17) Contract, where appropriate, on behalf of the State Resiliency Office with the federal government, its instrumentalities and agencies, any state, territory or the District of Columbia, and its agencies and instrumentalities, municipalities, foreign governments, public bodies, private corporations, partnerships, associations and individuals;

(18) Use funds administered by the State Resiliency Office for the maintenance, construction or reconstruction of capital repair and replacement items as necessary to effectuate the purposes of this article;

(19) Accept and use funds from the federal government, its instrumentalities and agencies, any state, territory or the District of Columbia, and its agencies and instrumentalities, municipalities, foreign governments, public bodies, private corporations, partnerships, associations and individuals for the purposes of disaster recovery, hazard mitigation, flood mitigation, flood prevention, and disaster response programs;

(20) Hire necessary employees at an appropriate salary equivalent to a competitive wage rate;

(21) Enroll appropriate employees in PERS, PEIA and workers’ compensation and unemployment programs, or their equivalents: Provided, That the State Resiliency Office, through the receipt of federal and/or state funds, pays the required employer contributions;

(22) Develop a human resources division that will administer and manage its employees and receive state matching funds as necessary to ensure maximum federal funds are secured;

(23) Have the ability to secure all other bonding, insurance or other liability protections necessary for its employees to fulfill their duties and responsibilities;
(24) Have the ability to draw upon other departments, divisions, agencies, and all other subdivisions of the state for research and input in fulfilling the requirements of this article, and its requests are to have priority over other such requests;

(25) Participate in the interdepartmental transfer of permanent State employees, as if he were a department secretary, under the provisions of §5F-2-7 et seq. of this code.

(26) Notwithstanding any other provision of this code to the contrary, acquire legal services that are necessary, including representation of the board, its employees and officers before any court or administrative body from the office of the Attorney General, who shall provide such legal assistance and representation, and

(27) Take all other actions necessary and proper to effectuate the purposes of this article.

The office shall have any other additional authority, duties, and responsibilities as prescribed by the Governor to effectuate the purposes of this article. Due to the at-will employment relationship with the office, its employees may not avail themselves of the state grievance procedure as set forth in §6C-2-1 et seq. of this code.

§29-31-4. Reporting to the Joint Legislative Committee on Flooding.

(a) The chair of the board of the State Resiliency Office shall report, at a minimum of quarterly, to the Joint Legislative Committee on Flooding, created pursuant to §4-15-1 et seq. of this code, in sufficient detail for the committee to be aware of the activities of the board to assure progress toward reducing and mitigating flood damage within this state while respecting and complying with the Takings Clause of the United States Constitution, the West Virginia Constitution, and related precedential court opinions, and to develop legislative recommendations.

(b) The chair of the council shall submit an annual report to the committee by December 31 of each year, along with any recommended legislation, budget requests and a summary of the activities of the Office for the previous year.
§29-31-5. Employees.

(a) The State Resiliency Officer shall have the power to hire, administer and manage employees necessary to fulfill its responsibilities.

(1) All employees will be exempt from both the classified services category and the classified exempt services category as set forth in §29-6-4 of this code.

(2) Employee positions are contingent on the receipt of the necessary federal and/or state funds.

(3) Each employee hired shall be deemed an at-will employee who may be discharged or released from his or her respective position without cause or reason.

(4) Employees may participate in the PEIA, PERS and workers’ compensation and unemployment compensation programs, or their equivalents. Public safety-related positions will continue to require dual status membership as outlined in §15-1B-26 of this code.

(5) All employees and officers of the State Resiliency Office who are entrusted with funds or property shall execute surety bonds.

(b) The State Resiliency Officer will set appropriate salary rates for employees equivalent to a competitive wage rate necessary to support a specific mission.

CHAPTER 33. INSURANCE.

ARTICLE 2. INSURANCE COMMISSIONER.


(a) The Legislature, finding that the National Flood Insurance Program is a voluntary federal program under which federal flood insurance is made available to participating communities is of vital importance to the citizens of West Virginia does hereby create the State Office of the National Flood Insurance Program, to be housed in the office of the Insurance Commissioner of West Virginia, and which office shall administer this program.
(b) The State Office of the National Flood Insurance Program shall have a coordinator who shall issue such regulations, guidance, instructions as necessary to effectively administer the program. The coordinator shall conduct trainings and will adopt and enforce adequate land use and development criteria that are consistent with the minimum standards established by the National Flood Insurance Program and shall report to the Insurance Commissioner.

(c) Any state-owned property that is located in a non-participating local community will be governed by the rules promulgated by the Insurance Commissioner and filed in the Code of State Rules.

(d) The coordinator, in consultation with the Insurance Commissioner, and with the assistance of floodplain managers around the state shall develop and publish a strategic plan to establish shared goals, define a path to meet those goals and, shall, invite other governmental units to adopt these goals and objectives. The strategic plan shall be initially presented by the Coordinator to the State Resiliency Officer and to the State Resiliency Office Board who shall review and approve the strategic plan and that plan shall be so presented and approved no less than biannually thereafter. The strategic plan shall be made available to the public.

(e) The coordinator shall establish and enforce flood plain management regulations for any state property in special hazard areas which, at a minimum, satisfy the criteria set forth in 44CFR§§ 60.3, 60.4, and 60.5 (2019).

(f) Notwithstanding any other provision of this code to the contrary, the coordinator shall cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties.

NOTE: The purpose of this bill is to reorganize and re-designate the Department of Military Affairs and Public Safety as the Department of Homeland Security and designate the Department of Homeland Security as the State Administrative Agency for homeland security and emergency management grants. The bill also establishes the powers and duties of the Secretary of Homeland Security; removes the Adjutant General’s Office, State Armory Board, and Military Awards Board from the Department of Military Affairs and Public Safety; clarifies the agencies established within the Department of Military Affairs and
Public Safety; and re-designates the Division of Homeland Security and Emergency Management as the Division of Emergency Management.

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