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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1984



ENROLLED

Com. Sub. for
HOUSE BILL No. 1199

(By ~~Ms.~~ *Del. Otte & Del. Doyle*)



Passed March 10, 1984

In Effect Ninety Days from Passage



ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 1199

(By DELEGATE OTTE and DELEGATE DOYLE)

[Passed March 10, 1984; in effect ninety days from passage.]

AN ACT to amend chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article seventeen, relating to findings; definitions; county fire association creation; prohibiting a full-time paid fire department located in a municipality from entering the fire association; vesting management and control in the county fire association and providing for appointment; sale or lease of property; reversion of assets upon dissolution; county fire board creation, management, membership, terms of members and vacancies; resident requirement of county fire board members; municipality location; compensation and expenses of county fire board members; providing that board is a public corporation; powers generally; limitations; county fire service fees, petition, election and increase; dedication of fees; incurring indebtedness and rights of creditors; agreements in connection with obtaining funds; providing tax exemptions; appropriations; contributions by county commissions and municipalities; funds and accounts; reports; audits and examination of books, records and accounts; criminal penalties; providing for sale or lease of property and revision of assets upon dissolution; providing for workers' compensation coverage; and providing for liberal construction.

Be it enacted by the Legislature of West Virginia:

That chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article seventeen, to read as follows:

ARTICLE 17. COUNTY FIRE BOARDS.

§7-17-1. Findings.

1 The Legislature finds that fire protection and saving lives
2 and property are important to the health and welfare of the
3 citizens of the state and that it is desirable for county govern-
4 ments to provide fire protection services to county residents.

§7-17-2. Definitions.

1 As used in this article unless the context clearly indicates
2 otherwise:

3 (1) "User" means any person to whom fire service is made
4 available under the provisions of this article.

5 (2) "County commission" means the county commission or
6 tribunal in lieu thereof of every county within the state of
7 West Virginia as provided in section nine, article nine of the
8 constitution of the state of West Virginia.

9 (3) "County fire association" means an association created
10 in §7-17-3.

11 (4) "County fire board" means that board created in
12 §7-17-6.

13 (5) "Fire service" means an organization that provides fire
14 prevention and fire protection to a community, the members
15 of such an organization or the fire fighting profession as a
16 whole.

**§7-17-3. County fire association creation; prohibiting entrance by
a municipality maintaining a full time paid fire de-
partment.**

1 The fire departments within each county are hereby autho-
2 rized to create and establish a county fire association, here-
3 inafter referred to as "fire association." The county fire asso-

4 ciation is created to discuss fire protection services to address
5 fire protection problems at the county level.

6 Upon the creation of a fire association, any full-time paid
7 fire department located in a municipality, as defined in section
8 nine, article fifteen, chapter eight of this code is excluded from
9 the provisions of this article. However, this provision shall not
10 prohibit the county commission or the fire board with the ap-
11 proval of the county commission from contracting with any
12 municipal fire department for fire protection services render-
13 ed to the county.

**§7-17-4. Management and control vested in the county fire asso-
ciation; appointment.**

1 The management and control of the fire association, its prop-
2 erty, operations, business and affairs shall be lodged with the
3 representatives from each state fire commission recognized fire
4 department forming the fire association. For the purpose of
5 forming the membership of the fire association, each fire de-
6 partment shall appoint one representative, by a majority vote
7 of the members of the fire department, to serve on the fire
8 association: *Provided*, That in the event three or less fire
9 departments form the fire association each fire department
10 shall elect two representatives, by a majority vote of the
11 members of each fire department, to serve on the fire asso-
12 ciation: *Provided, however*, That in the event only one fire
13 department forms the fire association the members of the fire
14 department shall conduct the fire association's business. The
15 members of the fire association shall serve for a term of three
16 years with the initial appointments beginning on the first day
17 of July, one thousand nine hundred eighty-four. If a member
18 resigns or for any other reason his position terminates during
19 his term of membership, a successor shall be elected by ma-
20 jority vote of the members of the represented department to
21 fill out the remainder of the vacated term. Members in office
22 at the expiration of their respective terms shall continue to
23 serve until their successors have been appointed and have
24 qualified.

**§7-17-5. Sale or lease of property; reversion of assets upon disso-
lution.**

1 The fire association shall fix and determine the terms and

2 conditions of any property or equipment to be leased or sold
3 by the fire association. Upon dissolution of the fire associa-
4 tion, all of its assets and property contributed by the county
5 commission shall revert to and become the property of the
6 county for which the board was created.

**§7-17-6. County fire board creation and management; membership;
terms of members; vacancies.**

1 The county fire association upon two-thirds vote of its
2 membership shall submit an application to the county commis-
3 sion requesting that the county commission create the county
4 fire board. Upon receipt of such application the county com-
5 mission may by majority vote create such a fire board and if
6 so created the county fire board, if authorized, shall be a cor-
7 poration. The county fire board shall establish the funding
8 priorities for the fire departments forming the fire association
9 and shall present a list of those priorities to the county com-
10 mission. However, no fire department or representative of a
11 fire department who is a member of the fire board or fire as-
12 sociation may apply for county funding from the county com-
13 mission except as provided for in subsection seven, section ten
14 of this article. The bylaws of the county fire board and stand-
15 ards of operation of the fire association shall be submitted
16 to, and approved by, the state fire commission and county
17 commission.

18 The county fire board shall consist of seven members. The
19 initial appointment to the county fire board shall begin on the
20 first day of July, one thousand nine hundred eighty-four. One
21 county commissioner, chosen by the county commission, shall
22 serve on the board. The county commission shall make the
23 initial appointments to the fire board so that one third of the
24 fire association members and the citizen members to be so ap-
25 pointed shall be appointed for a term of one year, one third of
26 the fire association members and the citizen members shall
27 be appointed for a term of two years and one third of the fire
28 association members and the citizen members shall be ap-
29 pointed for a term of three years. As the term of each such
30 initial appointee expires, the successor to fill the vacancy
31 created by such expired term shall be appointed by the county

32 commission for a term of three years. The county fire asso-
 33 ciation shall submit to the county commission the names of
 34 five members of the fire association, three of whom shall be
 35 appointed by the county commission to serve a term of three
 36 years. Such members are limited to two consecutive terms.
 37 Three citizen members shall be appointed by the county com-
 38 mission to serve on the board. The citizen members may not
 39 be associated with fire service or the county commission. The
 40 citizen members must be residents of the county of which the
 41 county fire board is formed and not more than one citizen
 42 member may be appointed from the same magisterial district
 43 in the county. The citizen members shall serve for a term of
 44 three years but are limited to two consecutive terms. If a
 45 member resigns or for any other reason his membership ter-
 46 minates during his term of office, a successor shall be ap-
 47 pointed from the same representative area to fill out the re-
 48 mainder of his term. Members in office at the expiration of
 49 their respective terms shall continue to serve until their suc-
 50 cessors have been appointed and have qualified.

51 Annually the board shall elect one of its appointed members
 52 as chairman and another as vice chairman, and shall appoint a
 53 secretary-treasurer. Four members of the board shall consti-
 54 tute a quorum and the affirmative vote of four members shall
 55 be necessary for any action taken by vote of the board. No
 56 vacancy in the membership of the authority shall impair the
 57 rights of a quorum by such vote to exercise all the rights and
 58 perform all duties of the board.

**§7-17-7. Resident requirement of county fire board members;
 municipality location.**

1 All members of the county fire board shall be residents
 2 of the county in which the county fire board is intended to
 3 operate. If a county boundary line divides a municipality's
 4 city limits, the area of the municipality in which the majority
 5 of the municipality's population resides determines the county
 6 in which the municipality is located for this purpose.

§7-17-8. Compensation; expenses.

1 No member of the board may receive any compensation in
 2 connection with his services as a member. Each member,

3 however, is entitled to reimbursement by the county fire
4 board for any necessary expenses actually incurred in con-
5 nection with the performance of his duties. However, not
6 more than one percent of the annual appropriations to the
7 board may be used for administrative expenses by the board.

§7-17-9. Board to be a public corporation.

1 The county fire board shall constitute and if authorized
2 be created as a public corporation under the name provided
3 for in its articles of incorporation and, as such, shall have
4 perpetual succession, may contract with and be contracted
5 with, sue and be sued and have and use a corporate seal.

§7-17-10. Powers generally.

1 The county fire board may:

2 (1) Make and adopt all necessary bylaws, rules and regu-
3 lations for its organization and operations not inconsistent
4 with law;

5 (2) Elect its own officers, appoint committees and
6 employ and fix compensation for personnel necessary for its
7 operation;

8 (3) Enter into contracts with any person, agency, govern-
9 mental department, firm or corporation, including both pub-
10 lic and private corporations, and renew, amend or supplement
11 such contracts;

12 (4) Generally do any and all things necessary or convenient
13 for the purpose of improving fire service protection within the
14 area to be served;

15 (5) Borrow money, apply for, receive and use grants-in-
16 aid, donations and contributions from any source or sources
17 and accept and use bequests, devises, gifts and donations from
18 any person, firm or corporation;

19 (6) Raise funds by the issuance and sale of revenue bonds
20 in the manner provided by law;

21 (7) Formulate and present a petition for funds to the coun-
22 ty commission: *Provided*, That not more than one percent of

23 such funds be used for purposes other than the prioritized
24 needs of the member departments;

25 (8) Purchase or otherwise acquire, own, hold, sell and dis-
26 pose of real and personal property; and

27 (9) Expend its funds in the execution of the powers and
28 authority herein given, which expenditures, by the means
29 authorized herein, are hereby determined and declared as a
30 matter of legislative finding to be for a public purpose and
31 use, in the public interest and for the general welfare of
32 the people of West Virginia.

§7-17-11. Limitations.

1 County fire associations and county fire boards shall be
2 subject to the authority of the governing body in which said
3 association and boards are primarily located.

**§7-17-12. County fire service fees; petition; election; dedication;
increase.**

1 Every county commission which provides fire protection
2 services has plenary power and authority to provide by ordi-
3 nance for the continuance or improvement of such service, to
4 make regulations with respect thereto and to impose by ordi-
5 nance, upon the users of such services, reasonable fire service
6 rates, fees and charges to be collected in the manner specified
7 in the ordinance. However, before a county commission can
8 impose by ordinance, upon the users of such service, a reason-
9 able fire service fee, ten percent of the qualified voters shall
10 present a petition duly signed by them in their own handwriting
11 and filed with the clerk of the county commission directing
12 that the county commission impose such a fee. The county
13 commission shall not have a lien on any property as security
14 for payments due under the ordinance. Any ordinance enacted
15 under the provisions of this section shall be published as a
16 Class II legal advertisement in compliance with the provisions
17 of article three, chapter fifty-nine of this code, and the publi-
18 cation area for such publication shall be the county in which
19 the county fire board is located. In the event thirty percent
20 of the qualified voters of the county by petition duly signed by
21 them in their own handwriting and filed with the clerk of the

22 county commission within fifteen days after the expiration of
23 such publication protest against such ordinance as enacted or
24 amended, the ordinance may not become effective until it is
25 ratified by a majority of the legal votes cast thereon by the
26 qualified voters of such county at any primary, general or
27 special election as the county commission directs. Voting
28 thereon may not take place until after notice of the submission
29 has been given by publication as above provided for the publi-
30 cation of the ordinance after it is adopted. The powers and
31 authority hereby granted to county commissions are in addi-
32 tion to and supplemental to the powers and authority otherwise
33 granted to them by other provisions of this code.

34 Any fees imposed under this article are dedicated to the
35 county fire board for the purposes provided in this article.

36 In the event the county fire board determines an increase in
37 any such fee imposed by this section is necessary, it shall by
38 resolution request the county commission for such an increase.
39 Procedures set forth in this section for the initial levy of such
40 a fee shall be followed by the county commission in the event
41 an increase is sought.

§7-17-13. Incurring indebtedness; rights of creditors.

1 The county fire board may incur any proper indebtedness
2 and issue any obligations and give any security therefor which
3 it considers necessary or advisable in connection with carrying
4 out its purposes as hereinbefore mentioned. No statutory limi-
5 tation with respect to the nature, or amount, interest rate or
6 duration of indebtedness which may be incurred by munici-
7 palities or other public bodies applies to indebtedness of the
8 county fire board.

9 No indebtedness or obligation incurred by the board shall
10 give any right against any member of the governing body
11 of any participating government or any member of the board.
12 Any obligation or indebtedness of any nature of the board
13 shall never constitute an obligation or indebtedness of any
14 participating government or the governing body of any partic-
15 ipating government, within the meaning of any constitutional
16 provision or statutory limitation and shall never constitute or

17 give rise to a pecuniary liability of any participating govern-
18 ment or the governing body of any participating government
19 or be a charge against the general credit or taxing power of
20 any participating government or the governing body of any
21 participating government. The rights of creditors of the board
22 shall be solely against the board as a corporate body and
23 shall be satisfied only out of revenues, moneys or property
24 received or held by it in its corporate capacity.

§7-17-14. Agreements in connection with obtaining funds.

1 The county fire board may, in connection with obtaining
2 funds for its purposes, enter into any agreement with any
3 person, firm or corporation, including the federal government;
4 or any agency or subdivision thereof, containing provisions,
5 covenants, terms and conditions as the county fire board con-
6 siders advisable.

§7-17-15. Property, bonds and obligations of authority exempt from taxation.

1 The county fire board is exempt from the payment of any
2 taxes or fees to the state or any subdivision thereof or to
3 any officer or employee of the state or other subdivision there-
4 of. The property of the county fire board is exempt from all
5 local and municipal taxes. Bonds, notes, debentures and other
6 evidence of indebtedness of the county fire board are declared
7 to be issued for a public purpose and to be public instrumen-
8 talities and are exempt from taxes.

§7-17-16. Appropriations authorized.

1 The county commission and any municipality therein, or
2 any one or more of them, jointly and severally, may contrib-
3 ute by appropriation from any funds available, to the cost
4 of the operation and projects of the county fire board.

§7-17-17. Contributions by county commissions, municipalities and others; funds and accounts; reports; audit and examination of books, records and accounts; and penalties.

1 Contributions may be made to the county fire board from
2 time to time by the county commission of the county or any
3 municipal corporation therein, and by any persons, firms or

4 corporations which desire to do so. All such funds and all
5 other funds received by the county fire board shall be de-
6 posited in such bank or banks as the county fire board may
7 direct and shall be withdrawn therefrom in such manner as
8 the county fire board may direct. The county fire board shall
9 keep strict account of all its receipts and expenditures and
10 shall each quarter make a quarterly report to the county com-
11 mission and municipalities containing an itemized statement
12 of its receipts and disbursements during the preceding quarter.
13 Within sixty days after the end of each fiscal year, the county
14 fire board shall make an annual report containing an itemized
15 statement of its receipts and disbursements for the preceding
16 fiscal year. The annual report shall be published as a Class I
17 legal advertisement in compliance with the provisions of article
18 three, chapter fifty-nine of this code, and the publication area
19 for such publication shall be the county in which the county
20 fire board is located. The books, records and accounts of the
21 board are subject to audit and examination by the office of
22 the state tax commissioner of West Virginia and by any other
23 proper public official or body in the manner provided by
24 law. For failure to comply with the provisions of this section
25 the county fire board shall be fined not less than ten nor more
26 than twenty-five dollars.

**§7-17-18. Sale or lease of property; reversion of assets upon dis-
solution.**

1 The county fire board shall fix and determine the terms
2 and conditions of any property or equipment to be leased or
3 sold by the county fire board. Upon the dissolution of the
4 county fire board, all of its assets and property shall revert
5 to and become the property of the county for which the board
6 was created.

§7-17-19. Employees to be covered by workers' compensation.

1 All employees of the county fire board eligible thereto
2 are considered to be within the Workers' Compensation Act of
3 West Virginia, and premiums on their compensation shall be
4 paid by the county fire board as required by law.

§7-17-20. Liberal construction of article.

1 It is the purpose of this article to provide for the improve-

2 ment, development and advancement of fire protection ser-
3 vices within the counties and this article shall be liberally
4 construed as giving to the county fire board full and complete
5 power reasonably required to give effect to the purposes here-
6 of.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Samuel E. Blum

Chairman Senate Committee

Donald Anello

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Jedd C. White

Clerk of the Senate

Donald L. Stopp

Clerk of the House of Delegates

Walter P. Taylor

President of the Senate

Henry M. Lee, Jr.

Speaker House of Delegates

The within *incurred* this the *28*
day of *March*, 1984.

John D. Dyer

Governor

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SECY. OF STATE