

# WEST VIRGINIA LEGISLATURE

## 2020 REGULAR SESSION

**Enrolled**  
**Committee Substitute**  
**for**  
**Senate Bill 586**

SENATORS CARMICHAEL (MR. PRESIDENT) AND PREZIOSO

(BY REQUEST OF THE EXECUTIVE)

[Passed February 28, 2020; in effect 90 days from  
passage]

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

2020 MAR 25 P 4: 08

FILED

SB 586

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1 AN ACT to repeal §15-5-4 and §15-5-27 of the Code of West Virginia, 1931, as amended; to  
2 repeal §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 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-  
4 12, §29-3-12a, §29-3-12b, §29-3-13, §29-3-14, §29-3-15, §29-3-16, §29-3-16a, §29-3-  
5 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,  
6 §29-3-28, §29-3-29, §29-3-30, and §29-3-32 of said code; to amend and reenact §5F-1-2  
7 of said code; to amend and reenact §5F-2-1 and §5F-2-2 of said code; to amend and  
8 reenact §15-1A-3 of said code; to amend and reenact §15-5-3, §15-5-4b, §15-5-4c, §15-  
9 5-13, §15-5-20a, §15-5-24, and §15-5-26 of said code; to amend said code by adding  
10 thereto a new section, designated §15-5-29; to amend and reenact §15A-1-2 and §15A-  
11 1-3 of said code; to amend said code by adding thereto a new section, designated §15A-  
12 1-9; to amend said code by adding thereto a new article, designated §15A-9-1, §15A-9-2,  
13 §15A-9-3, §15A-9-4, §15A-9-5, §15A-9-6, and §15A-9-7; to amend said code by adding  
14 thereto a new article, designated §15A-10-1, §15A-10-2, §15A-10-3, §15A-10-4, §15A-10-  
15 5, §15A-10-6, §15A-10-7, §15A-10-8, §15A-10-9, §15A-10-10, §15A-10-11, §15A-10-12,  
16 §15A-10-13, §15A-10-14, §15A-10-15, §15A-10-16, §15A-10-17, §15A-10-18, §15A-10-  
17 19, §15A-10-20, §15A-10-21, §15A-10-22, §15A-10-23, §15A-10-24, and §15A-10-25; to  
18 amend said code by adding thereto a new article, designated §15A-11-1, §15A-11-2,  
19 §15A-11-3, §15A-11-4, §15A-11-5, §15A-11-6, §15A-11-7, §15A-11-8, §15A-11-9, §15A-  
20 11-10, and §15A-11-11; to amend and reenact §19-1-4 of said code; to amend and  
21 reenact §19-21A-4 of said code; to amend and reenact §20-1-7 of said code; to amend  
22 and reenact §22-1-6 of said code; to amend and reenact §29-31-2, §29-31-3, and §29-31-  
23 4 of said code; to amend said code by adding thereto a new section, designated §29-31-  
24 5; and to amend said code by adding thereto a new section, designated §33-2-23, all  
25 relating to reorganizing and redesignating the Department of Military Affairs and Public  
26 Safety as the Department of Homeland Security; clarifying the divisions that report to the

27 cabinet secretary of that department; removing the Adjutant General's Office, State  
28 Armory Board, and Military Awards Board from the Department of Military Affairs and  
29 Public Safety; clarifying the agencies established within the Department of Military Affairs  
30 and Public Safety; delineating that the secretary of each state Department cooperate with  
31 the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling  
32 its duties; requiring that the Adjutant General cooperate with the State Resiliency Office  
33 to the fullest extent practicable to assist that office in fulfilling its duties; designating the  
34 Department of Homeland Security as the State Administrative Agency for homeland  
35 security and emergency management grants; designating the Division of Homeland  
36 Security and Emergency Management as the Division of Emergency Management;  
37 making the employees of the Division of Emergency Management classified-exempt  
38 employees; terminating the West Virginia Disaster Recovery Board; providing that the  
39 State Resiliency Officer have the authority to disburse funds from the Disaster Recovery  
40 Trust Fund; granting powers necessary to accomplish such disbursement to the State  
41 Resiliency Officer; providing for appropriations and other funding sources to the Disaster  
42 Recovery Trust Fund; deleting requirements for government entities with deficiently  
43 trained floodplain managers to transfer their floodplain oversight to another governmental  
44 entity; amending provisions regarding administration of the Disaster Recovery Trust Fund;  
45 providing the State Resiliency Officer need not pay taxes for moneys deposited in the  
46 Disaster Recovery Trust Fund or other assets of such fund; repealing the provision for an  
47 annual report of the abolished Disaster Recovery Board; providing the Director of the  
48 Division of Emergency Management shall cooperate with the State Resiliency Office to  
49 the fullest extent practicable to assist that office in fulfilling its duties; establishing the  
50 powers and duties of the Secretary of the Department of Homeland Security; establishing  
51 the Office of Administrative Hearings within the Department of Homeland Security;  
52 authorizing the appointment of a Chief Hearing Examiner; establishing the organization of

53 the Office of the Chief Hearing Examiner; establishing the jurisdiction of the Office of  
54 Administrative Hearings; establishing hearing procedures; establishing rule-making  
55 authority; establishing a duty to provide notice of change of address; establishing policies  
56 for the transition from divisions of the Department of Homeland Security to the Office of  
57 Administrative Hearings; separating the Fire Marshal from the Fire Commission;  
58 transferring the Fire Marshal from the State Fire Commission to the Department of  
59 Homeland Security; setting forth the appointment process for the Fire Marshal; setting  
60 forth qualifications, salary, and responsibilities of the State Fire Marshal; allowing the Fire  
61 Marshal to hire employees; allowing the Fire Marshal to hire a deputy, and setting the  
62 qualifications of the deputy; requiring new Fire Marshals 1, 2, 3, and deputies to become  
63 certified law-enforcement officers; setting forth powers and duties of the State Fire  
64 Marshal; setting forth additional powers and duties relating to law enforcement, statewide  
65 contracts, penalties, and authority to carry firearms; creating enforcement standards for  
66 the state building and fire codes; creating rule-making authority; allowing the appointment  
67 of advisory boards; setting forth the responsibilities of insurance companies in fire loss  
68 investigations; allowing the Fire Marshal to set fees; requiring an annual report; setting  
69 forth maintenance of fire hazard standards; allowing orders for repair or demolition;  
70 allowing orders to contain notice to comply and a right to appeal; providing standards for  
71 service of repair or demolition orders; clarifying who is responsible for cost of work or  
72 demolition; allowing an action to recover cost; requiring smoke detectors in one- and two-  
73 family dwellings; requiring carbon monoxide detectors in residential units, schools, and  
74 day care facilities and setting forth penalties; allowing the use of live trees in public  
75 buildings under certain circumstances; setting forth safety standards for bed and breakfast  
76 establishments; setting forth standards for installation of propane gas systems; setting  
77 forth parameters to abate fire hazards; setting forth license denial, limitation, suspension,  
78 and revocation standards; creating an independent informal dispute process for licensees

79 upon appeal; establishing demonstration building and equipment standards for  
80 educational instruction for fire protection and prevention and abatement; creating crime of  
81 false alarm of fires and setting forth penalties; creating tax on insurance companies;  
82 setting forth general criminal penalties for violation; setting forth that the parts of the article  
83 are construed liberally; creating a severability section; allowing the Fire Marshal to award  
84 service weapons to retiring employees under certain conditions; allowing the Fire Marshal  
85 to dispose of unused firearms; continuing the Fire Commission; setting forth composition,  
86 qualifications, appointment, terms of office, removal, vacancies, and compensation and  
87 expenses of commission; establishing chairperson, vice chairperson, meeting, and  
88 quorum requirements; creating rule-making authority for fire code, building code, and  
89 general rule-making authority; continuing the Hazardous Response Training Program;  
90 requiring public hearing and notice prior to promulgation of fire code; setting forth  
91 commission's powers and conduct of public hearings; setting forth commission's powers,  
92 duties, and authority; setting forth authority over volunteer fire department training and  
93 equipment, and creating rule-making authority for such; continuing courtesy certification  
94 of firefighters in surrounding states to serve as volunteer firefighters; continuing the Fire  
95 Service Equipment and Training Fund; providing the Commissioner of Agriculture shall  
96 cooperate with the State Resiliency Office to the fullest extent practicable to assist that  
97 office in fulfilling its duties; providing the State Conservation Committee shall cooperate  
98 with the State Resiliency Office to the fullest extent practicable to assist that office in  
99 fulfilling its duties; relating to additional powers, duties, and services of Director of Division  
100 of Natural Resources; creating exception to requirement that Division of Natural  
101 Resources payments be deposited in bank within 24 hours; providing the Director of the  
102 Division of Natural Resources shall cooperate with the State Resiliency Office to the fullest  
103 extent practicable to assist that office in fulfilling its duties; providing the Secretary of the  
104 Department of Environmental Protection shall cooperate with the State Resiliency Office

105 to the fullest extent practicable to assist that office in fulfilling its duties; repealing generally  
106 now-obsolete provisions relating to the Fire Commission and State Fire Marshal; placing  
107 the State Resiliency Office under the Office of the Governor; adding the President of the  
108 West Virginia Emergency Management Council, the Secretary of the Department of  
109 Homeland Security, and the Director of the Division of Emergency Management on the  
110 State Resiliency Office Board; adding two nonvoting member legislators from each house  
111 of the Legislature to the State Resiliency Office Board; specifying tenure of office on that  
112 board; providing that members of the board serve without compensation, but may collect  
113 necessary expenses; providing certain mandatory duties for that board; providing the  
114 State Resiliency Officer shall be appointed by the Governor with the advice and consent  
115 of the Senate, and setting the duties and qualifications for such officer; providing for the  
116 employment of a deputy to the State Resiliency Officer shall be appointed by the Governor  
117 with the advice and consent of the Senate, upon presentation from a list of names by the  
118 State Resiliency Office Board, and, setting the duties and qualifications for such officer;  
119 providing that the State Resiliency Officer and his or her deputy must have complimentary  
120 work experience; specifying the areas in which the State Resiliency Office Board shall be  
121 required to assist the State Resiliency Officer to fulfill the missions of that office, and  
122 specifying the areas where that body shall assist the State Resiliency Officer to devise  
123 plans and develop procedures; providing for certain exemptions from the Public Meetings  
124 Act and Freedom of Information Act for meetings of, and materials presented to, the board;  
125 delineating the authority of the State Resiliency Office and the State Resiliency Officer in  
126 carrying out their missions; providing the State Resiliency Officer shall report at least  
127 quarterly to the Joint Legislative Committee on Flooding; granting the State Resiliency  
128 Officer authority to hire employees for the office; providing that such employees are at-  
129 will, may participate in state insurance and other programs, and, if entrusted with state  
130 funds, shall execute surety bonds; providing that the State Resiliency Officer shall set

131 employee salary rates; creating the state Office of the National Flood Insurance Program  
132 in the Office of the Insurance Commissioner; requiring a coordinator to administer such  
133 program; providing that state-owned property in any nonparticipating community shall be  
134 governed by appropriate rules promulgated by the Insurance Commissioner; requiring the  
135 coordinator and floodplain managers to develop a strategic plan to meet goals and  
136 objectives, which plan shall be reviewed by and must be approved by the State Resiliency  
137 Officer and State Resiliency Office Board; requiring the coordinator to establish and  
138 enforce flood plain management regulations in special hazard areas which are in  
139 conformity with federal laws and regulations; and providing the coordinator of the state  
140 Office of the National Flood Insurance Program shall cooperate with the State Resiliency  
141 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.**

- 1 (a) There are created, within the executive branch of the state government, the following  
2 departments:
- 3 (1) Department of Administration;
  - 4 (2) Department of Environmental Protection;
  - 5 (3) Department of Health and Human Resources;
  - 6 (4) Department of Homeland Security;
  - 7 (5) Department of Revenue;
  - 8 (6) Department of Transportation;
  - 9 (7) Department of Commerce; and

10 (8) Department of Veterans' Assistance.

11 (b) Each department will be headed by a secretary appointed by the Governor with the  
12 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.**

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

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

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

- 19 (1) Division of Labor provided in §21-1-1 *et seq.* of this code, which includes:
  - 20 (A) Occupational Safety and Health Review Commission provided in §21-3A-1 *et seq.* of  
21 this code; and

22 (B) Board of Manufactured Housing Construction and Safety provided in §21-9-1 *et seq.*  
23 of this code.

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

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

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

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

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

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

33 (4) Division of Natural Resources and Natural Resources Commission provided in §20-1-  
34 1 *et seq.* of this code;

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

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

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

38 (A) Division of Unemployment Compensation;

39 (B) Division of Employment Service;

40 (C) Division of Workforce Development; and

41 (D) Division of Research, Information and Analysis.

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

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

46 (10) Division of Rehabilitation Services provided in §18-10A-1 *et seq.* of this code.

47 (c) The Economic Development Authority provided in §31-15-1 *et seq.* of this code is  
48 continued as an independent agency within the executive branch.

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

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

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

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

63 (1) Air Quality Board provided in §22B-2-1 *et seq.* of this code;

64 (2) Solid Waste Management Board provided in §22C-3-1 *et seq.* of this code;

65 (3) Environmental Quality Board, or its successor board, provided in §22B-3-1 *et seq.* of  
66 this code;

67 (4) Surface Mine Board provided in §22B-4-1 *et seq.* of this code;

68 (5) Oil and Gas Inspectors’ Examining Board provided in §22C-7-1 *et seq.* of this code;

69 (6) Shallow Gas Well Review Board provided in §22C-8-1 *et seq.* of this code; and

70 (7) Oil and Gas Conservation Commission provided in §22C-9-1 *et seq.* of this code.

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

74 (1) Human Rights Commission provided in §5-11-1 *et seq.* of this code;

75 (2) Bureau for Public Health provided in §16-1-1 *et seq.* of this code;

76 (3) Office of Emergency Medical Services and the Emergency Medical Service Advisory  
77 Council provided in §16-4C-1 *et seq.* of this code;

78 (4) Health Care Authority provided in §16-29B *et seq.* of this code;

79 (5) State Commission on Intellectual Disability provided in §29-15-1 *et seq.* of this code;

80 (6) Women's Commission provided in §29-20-1 *et seq.* of this code; and

81 (7) Bureau for Child Support Enforcement provided in chapter 48 of this code.

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

85 (1) West Virginia State Police;

86 (2) Division of Emergency Management provided in §15-5-1 *et seq.* of this code and  
87 Emergency Response Commission provided in §15-5A-1 *et seq.* of this code: *Provided*, That  
88 notwithstanding any other provision of this code to the contrary, whenever in this code, or a rule  
89 promulgated thereunder, a reference is made to the Division of Homeland Security and  
90 Emergency Management, it shall be construed to mean the Division of Emergency Management;

91 (3) Division of Administrative Services;

92 (4) Division of Corrections and Rehabilitation;

93 (5) Fire Commission;

94 (6) The State Fire Marshal;

95 (7) Board of Probation and Parole;

96 (8) The West Virginia Fusion Center;

97 (9) The Division of Protective Services; and

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

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

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

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

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

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

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

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

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

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

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

113 (10) The Municipal Bond Commission provided in §13-3-1 *et seq.* of this code;

114 (11) The Office of Tax Appeals provided in §11-10A-1 of this code; and

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

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

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

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

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

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

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

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

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

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

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

133 (n) Except for powers, authority, and duties that have been delegated to the secretaries  
134 of the departments by the provisions of §5F-2-2 of this code, the existence, powers, authority,  
135 and duties of boards and the membership, terms and qualifications of members of the boards are  
136 not affected by the enactment of this chapter. All boards that are appellate bodies or are  
137 independent decision makers shall not have their appellate or independent decision-making  
138 status affected by the enactment of this chapter.

139 (o) Any department previously transferred to and incorporated in a department by prior  
140 enactment of this section means a division of the appropriate department. Wherever reference is  
141 made to any department transferred to and incorporated in a department created in §5F-1-2 of  
142 this code, the reference means a division of the appropriate department and any reference to a  
143 division of a department so transferred and incorporated means a section of the appropriate  
144 division of the department.

145 (p) When an agency, board, or commission is transferred under a bureau or agency other  
146 than a department headed by a secretary pursuant to this section, that transfer is solely for  
147 purposes of administrative support and liaison with the Office of the Governor, a department  
148 secretary or a bureau. Nothing in this section extends the powers of department secretaries under

149 §5F-2-2 of this code to any person other than a department secretary and nothing limits or  
150 abridges the statutory powers and duties of statutory commissioners or officers pursuant to this  
151 code.

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

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

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

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

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

11 (4) Transfer permanent state employees between departments in accordance with the  
12 provisions of §5F-2-7 of this code;

13 (5) Delegate, assign, transfer, or combine responsibilities or duties to or among  
14 employees, other than administrators or board members;

15 (6) Reorganize internal functions or operations;

16 (7) Formulate comprehensive budgets for consideration by the Governor and transfer  
17 within the department funds appropriated to the various agencies of the department which are not  
18 expended due to cost savings resulting from the implementation of the provisions of this chapter:

19 *Provided*, That no more than 25 percent of the funds appropriated to any one agency or board  
20 may be transferred to other agencies or boards within the department: *Provided, however*, That  
21 no funds may be transferred from a special revenue account, dedicated account, capital  
22 expenditure account, or any other account or funds specifically exempted by the Legislature from

23 transfer, except that the use of appropriations from the State Road Fund transferred to the office  
24 of the Secretary of the Department of Transportation is not a use other than the purpose for which  
25 the funds were dedicated and is permitted: *Provided further*, That if the Legislature by subsequent  
26 enactment consolidates agencies, boards, or functions, the appropriate secretary may transfer  
27 the funds formerly appropriated to the agency, board, or function in order to implement  
28 consolidation. The authority to transfer funds under this section shall expire on June 30, 2010;

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

36 (9) Acquire by lease or purchase property of whatever kind or character and convey or  
37 dispose of any property of whatever kind or character as authorized by law: *Provided*, That the  
38 powers granted to the secretary to lease, purchase, convey, or dispose of such property shall be  
39 exercised in accordance with §5A-3-1 *et seq.*, §5A-10-1 *et seq.*, and §5A-3-11 *et seq.* of this code:  
40 *Provided, however*, That the powers granted to the secretary to lease, purchase, convey, or  
41 dispose of such property shall not exceed or be interpreted as authority to exceed the powers  
42 granted by the Legislature to the various commissioners, directors, or board members of the  
43 various departments, agencies, or boards that comprise and are incorporated into each  
44 secretary's department under this chapter;

45 (10) Conduct internal audits;

46 (11) Supervise internal management;

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

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

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

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

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

62 (1) The elimination, reduction, and restriction of the state's vehicle or other transportation  
63 fleet;

64 (2) The elimination, reduction, and restriction of state government publications, including  
65 annual reports, informational materials, and promotional materials;

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

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

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

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

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

79 (d) The layoff and recall rights of employees within the classified service of the state as  
80 provided in §29-6-10(5) and §29-6-10(6) of this code shall be limited to the organizational unit  
81 within the agency or board and within the occupational group established by the classification and  
82 compensation plan for the classified service of the agency or board in which the employee was  
83 employed prior to the agency or board's transfer or incorporation into the department: *Provided*,  
84 That the employee shall possess the qualifications established for the job class. The duration of  
85 recall rights provided in this subsection shall be limited to two years or the length of tenure,  
86 whichever is less. Except as provided in this subsection, nothing contained in this section shall  
87 be construed to abridge the rights of employees within the classified service of the state as  
88 provided in §29-6-10 and §29-6-10a of this code.

89 (e) Notwithstanding any other provision of this code to the contrary, the secretary of each  
90 department with authority over programs which have an impact on the delivery of health care  
91 services in the state or are payors for health care services or are payors for prescription drugs,  
92 including, but not limited to, the Public Employees Insurance Agency, the Department of Health  
93 and Human Resources, the Bureau of Senior Services, the Children's Health Insurance Program,  
94 the Health Care Authority, the Office of the Insurance Commissioner, the Division of Corrections,  
95 the Division of Juvenile Services, the Regional Jail and Correctional Facility Authority, state  
96 colleges and universities, public hospitals, state or local institutions including nursing homes and  
97 veterans' homes, the Division of Rehabilitation Services, public health departments, the Bureau  
98 for Medical Services and other programs, which have an impact on the delivery of health care

99 services or are payors for health care services or are payors for prescription drugs, in West  
100 Virginia shall cooperate with the Governor's Office of Health Enhancement and Lifestyle Planning  
101 established pursuant to §16-29H-1 *et seq.* of this code for the purpose of improving the health  
102 care delivery services in West Virginia for any program over which they have authority.

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

## **CHAPTER 15. PUBLIC SAFETY.**

### **ARTICLE 1A. ADJUTANT GENERAL.**

#### **§15-1A-3. Duties.**

1 (a) The Adjutant General shall be chief of staff to the Governor and commanding general  
2 of the organized militia. He or she shall direct the planning and employment of the military forces  
3 of the state in carrying out their state mission, establish unified command of state forces whenever  
4 jointly engaged, coordinate the military affairs with the civil defense of the state and organize and  
5 coordinate the activities of all civil agencies including local and state police in event of declaration  
6 of a limited emergency by the Governor pursuant to §15-1D-1 *et seq.* of this code. In time of  
7 emergency or disaster, the Adjutant General shall coordinate his or her activities with those of the  
8 Office of Emergency Services provided for by §15-5-1 *et seq.* of this code. He or she shall be  
9 custodian of all military records of the state and shall keep the same indexed and available for  
10 ready reference. He or she shall keep an itemized account of all moneys received and dispensed  
11 from all sources and shall make an annual report to the Governor on the condition of the organized  
12 militia, receipts and expenditures and such other matters relating to the military forces of the state  
13 and the Adjutant General's department as he or she shall deem expedient.

14 (b) The Adjutant General shall be responsible for the organization, administration, training,  
15 and supply of the organized militia and shall cause to be procured, prepared, and issued to the

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

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

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

**ARTICLE 5. DIVISION OF EMERGENCY MANAGEMENT.**

**§15-5-3. Division of Emergency Management created.**

1           (a) The Division of Homeland Security and Emergency Management is continued as the  
2 Division of Emergency Management, within the Department of Homeland Security. All of the  
3 allied, advisory, affiliated, or related entities, and funds associated with the Division of Homeland  
4 Security and Emergency Management and all its functions, personnel, and property are  
5 transferred to, incorporated in, and administered as a part of the Division of Emergency  
6 Management. Wherever the words "Office of Emergency Services" or "Division of Homeland  
7 Security and Emergency Management" appear in this code, they shall mean the Division of  
8 Emergency Management.

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

17           (c) The director may employ such technical, clerical, stenographic, and other personnel,  
18 fix their compensation and make expenditures within the appropriation to the division or from other  
19 funds made available for the purpose of providing homeland security and emergency  
20 management services to carry out the purpose of this article. Beginning on the effective date of  
21 this section, all employees of the Division of Emergency Management are exempt from the Civil  
22 Service System: *Provided*, That employees of the Division of Homeland Security and Emergency  
23 Management who are currently members of the classified service, having been transferred to the  
24 Division of Emergency Management, retain their classified service as long as they remain in their

25 current classification. Thereafter, if the employee leaves his or her current classification and  
26 maintains employment in the Division of Emergency Management, that employee, at that time,  
27 becomes transferred to the classified-exempt service as that term is defined in §29A-6-2 of this  
28 code.

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

32 (e) The director, subject to the direction and control of the Governor through the Secretary  
33 of the Department of Homeland Security, shall be the executive head of the Division of Emergency  
34 Management and shall be responsible to the Governor and the Secretary of the Department of  
35 Homeland Security for carrying out the program for emergency management in this state. The  
36 director, in consultation with the Secretary of the Department of Homeland Security, shall  
37 coordinate the activities of all organizations for emergency management within the state and  
38 maintain liaison with and cooperate with homeland security, emergency management and other  
39 emergency service and civil defense agencies and organizations of other states and of the federal  
40 government, and shall have additional authority, duties, and responsibilities authorized by §15-5-  
41 1 *et seq.* of this code as may be prescribed by the Governor or the Secretary of the Department  
42 of Homeland Security.

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

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

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

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

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

57 (4) Employees may participate in the PEIA, PERS, workers' compensation, unemployment  
58 compensation programs, or their equivalents.

59 (5) The director shall set appropriate salary rates for employees equivalent to a rate  
60 commensurate with industry standards.

61 (6) Contracts may be entered into pursuant to this subsection with the federal government,  
62 its instrumentalities and agencies, any state, territory or the District of Columbia and its agencies  
63 and instrumentalities, municipalities, foreign governments, public bodies, private corporations,  
64 partnerships, associations and individuals for specialized technical services at a rate  
65 commensurate with industry standards as determined by the director to support specific activities  
66 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.**

1 [Repealed.]

**§15-5-4b. West Virginia Disaster Recovery Trust Fund disbursement.**

1 Upon the proclamation of the existence of a state of emergency or state of preparedness  
2 under the provisions of §15-5-6 of this code, The State Resiliency Officer, shall have the power  
3 to disburse funds from the disaster relief recovery trust fund created pursuant to §15-5-24 of this  
4 code to any person, political subdivision, or local organization for emergency services in such  
5 amounts and in such manner, and to take such other actions, as the State Resiliency Officer may

6 determine is necessary or appropriate in order to provide assistance to any person, political  
7 subdivision, or local organization for emergency services responding to or recovering from the  
8 disaster, or otherwise involved in disaster recovery activities: *Provided*, That except as provided  
9 hereafter in this section, requisitions for payment shall not be made or authorized for payment by  
10 the Auditor without the express approval of the State Resiliency Officer, except that the State  
11 Resiliency Officer's approval shall be deemed to be made for the initial disbursement to cover the  
12 first 30 days of disaster response, and: *Provided, however*, That all subsequent disbursements  
13 arising out of the events surrounding the state of emergency or preparedness giving rise to the  
14 relevant disbursements shall require the express approval of the State Resiliency Officer, which  
15 approval shall not be unduly withheld or delayed.

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

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

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

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

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

12 (4) To sue and be sued;

13 (5) To acquire, hold, and dispose of real and personal property;

14 (6) To enter into agreements or other transactions with any federal or state agency,  
15 political subdivision, or person;

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

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

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

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

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

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

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

42           (14) To make or participate in the making of insured or uninsured construction and  
43 permanent loans or grants for temporary housing or residential housing, community facilities, and  
44 essential business activities: *Provided*, That no such loan or grant shall be made except upon a  
45 written finding by the State Resiliency Officer that the loan or grant and the manner in which it will  
46 be provided constitute a disaster recovery activity and that the loan or grant is not otherwise  
47 available, wholly or in part, from a private or public lender upon reasonably equivalent terms and  
48 conditions; and

49           (15) Do all acts necessary and proper to carry out the powers granted to the State  
50 Resiliency Office.

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

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

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

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

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

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

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

5 (b) Commencing July 1, 2012, each floodplain manager in the state is required to complete  
6 six hours of training in floodplain management annually to maintain good standing with the West  
7 Virginia Division of Emergency Management.

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

**§15-5-24. Disaster Recovery Trust Fund; disbursement of funds.**

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

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

**§15-5-26. Tax exemption.**

1 The State Resiliency Officer shall not be required to pay any taxes and assessments to  
2 the state or any political subdivision of the state upon any of its moneys, properties, or assets or  
3 upon its obligations or other evidences of indebtedness pursuant to the provisions of this article,

4 or upon any moneys, funds, revenues, or other income held or received into the West Virginia  
5 disaster recovery fund.

**§15-5-27. Annual report.**

1 [Repealed.]

**§15-5-29. Cooperation with State Resiliency Office.**

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

**CHAPTER 15A. DEPARTMENT OF HOMELAND SECURITY.**

**ARTICLE 1. DEFINITIONS.**

**§15A-1-2. Department.**

1 "Department" means the Department of Homeland Security.

**§15A-1-3. Secretary.**

1 "Secretary" means the Secretary of the Department of Homeland Security.

**§15A-1-9. Department of Homeland Security; Secretary of the Department of Homeland Security; powers and duties.**

1 (a)(1) The Department of Homeland Security is established within the Executive Branch  
2 as a criminal justice agency. In addition to all other powers and duties set forth in this code, the  
3 department is designated as the principal state agency to coordinate the receipt, distribution, and  
4 monitoring of all funds available from any source for the purpose of equipping, training, research,  
5 and education in regard to homeland security related items, issues, or services. The department  
6 is authorized to coordinate and establish standards for all operations and activities of the state  
7 related to homeland security efforts and to establish protocols for coordinating and sharing

8 information with state and federal law enforcement and intelligence agencies responsible for  
9 investigating and collecting information related to homeland security and national security threats.

10 (2) The department is designated as the state administrative agency responsible for  
11 homeland security and emergency management for the planning and development of state  
12 programs and grants which may be funded by federal, state, or other allocations in the areas of  
13 homeland security and emergency management, unless such administration has been  
14 specifically entrusted to another state agency by the Governor or the Legislature.

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

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

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

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

36 (1) That the department carries out its functions in a manner which supplements and  
37 complements the homeland security and public safety policies, programs and procedures of the  
38 federal government, other state governments, and other instrumentalities of this state; and

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

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

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

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

57 (3) Require any persons contracting to install, establish, modify, operate, or close a  
58 correctional or other public safety facility to furnish the fingerprints of the person or persons; any  
59 officer, director, or manager of the contractor; any person owning a five percent or more interest,

60 beneficial or otherwise, in the contractor's business; or any other person conducting or managing  
61 the affairs of the contractor, in whole or in part. These fingerprints may be used to obtain and  
62 review any police record for the purposes that may be in the interest of homeland security or  
63 public safety, and to use the fingerprints furnished to conduct a criminal records check through  
64 the Criminal Identification Bureau of the West Virginia State Police and a national criminal history  
65 check through the Federal Bureau of Investigation. The results of the checks shall be provided to  
66 the secretary;

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

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

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

81 (g) The secretary shall serve as the Homeland Security Advisor (HSA) for West Virginia,  
82 and shall be responsible for coordinating, designing, and implementing West Virginia's program  
83 for homeland security. The secretary shall be the principal point of contact between the State of  
84 West Virginia and the federal government with respect to homeland security issues. The HSA  
85 shall either possess at least a secret clearance through the federal government or be able to

86 qualify for, and be in the process of obtaining, such clearance at the time of his or her appointment  
87 as HSA. The HSA shall keep the Governor advised of all homeland security matters and shall be  
88 the main point of contact for the Governor on these issues. The secretary, with permission of the  
89 Governor, may delegate all or a portion of the functions of the HSA to a designee who possesses  
90 at least a secret clearance.

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

96 (i) The Department of Homeland Security shall cooperate with the State Resiliency Office  
97 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.**

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

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

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

7 (d) The salary of the Chief Hearing Examiner shall be set by the secretary of the  
8 department. (e) In addition to adherence to the code of conduct set forth in §6B-2-5a of this code,  
9 the Chief Hearing Examiner during his or her term shall:

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

11 (2) Not otherwise engage in the active practice of law or be associated with any group or  
12 entity which is itself engaged in the active practice of law. This subsection does not prohibit the

13 Chief Hearing Examiner from being a member of a national, state, or local bar association or  
14 committee, or of any other similar group or organization, nor does it prohibit the Chief Hearing  
15 Examiner from engaging in the practice of law by representing himself, herself, or his or her  
16 immediate family in their personal affairs in matters not subject to this article;

17 (3) Not engage directly or indirectly in any activity, occupation, or business interfering or  
18 inconsistent with his or her duties as Chief Hearing Examiner;

19 (4) Not hold any other appointed public office or any elected public office or any other  
20 position of public trust; and

21 (5) Not be a candidate for any elected public office, or serve on or under any committee  
22 of, any political party.

23 (f) The Chief Hearing Examiner serves at the will and pleasure of the secretary.

**§15A-9-2. Organization of office.**

1 (a) The Chief Hearing Examiner is the chief administrator of the Office of Administrative  
2 Hearings and he or she may employ hearing examiners and other clerical personnel necessary  
3 for the proper administration of this article.

4 (1) The Chief Hearing Examiner may delegate administrative duties to other employees,  
5 but the Chief Hearing Examiner is responsible for all official delegated acts.

6 (2) All employees of the Office of Administrative Hearings are classified exempt.

7 (b) The Chief Hearing Examiner shall:

8 (1) Direct and supervise the work of the office staff;

9 (2) Hold hearings;

10 (3) Make hearing assignments;

11 (4) Maintain the records of the office;

12 (5) Review and approve decisions of hearing examiners as to legal accuracy, clarity, and  
13 other requirements; and

14 (6) Perform the other duties necessary and proper to carry out the purposes of this article.

15 (c) The administrative expenses of the office shall be included within the annual budget of  
16 the Division of Administrative Services.

**§15A-9-3. Jurisdiction of Office of Administrative Hearings.**

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

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

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

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

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

**§15A-9-4. Hearing procedures.**

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

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

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

10 (2) The West Virginia Rules of Evidence governing proceedings in the courts of this state  
11 shall be given like effect in hearings held before a hearing examiner. All testimony shall be given  
12 under oath.

13 (3) The hearing examiner may request proposed findings of fact and conclusions of law  
14 from the parties prior to the issuance by the office of the decision in the matter.

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

**§15A-9-5. Rule-making authority.**

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

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

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

**§15A-9-7. Transition from divisions of the department to the Office of Administrative Hearings.**

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

6 (b) On the effective date of this article, all equipment and records necessary to effectuate  
7 the purposes of this article shall be transferred from the many divisions of the department to the

8 Office of Administrative Hearings: *Provided*, That in order to provide for a smooth transition, the  
9 secretary may establish interim policies and procedures, determine how the equipment and  
10 records are to be transferred and provide that the transfers provided for in this subsection take  
11 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.**

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

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

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

16 (d) The State Fire Marshal, shall have full responsibility for the enforcement of fire and life  
17 safety programs in this state designated to minimize fire hazards and disaster and loss of life and  
18 property from these causes. These responsibilities include, but are not limited to, the

19 establishment and enforcement of fire safety practices throughout the state, preventive inspection  
20 and correction activities, coordination of fire safety programs with volunteer and paid fire  
21 departments, and critical analysis and evaluation of West Virginia's fire loss statistics for  
22 determination of problems and solutions.

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

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

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

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

**§15A-10-2. Powers, duties, and authority of State Fire Marshal.**

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

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

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

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

18 (e) The State Fire Marshal may accept, on behalf of the Office of the State Fire Marshal,  
19 or on behalf of the State Fire Commission, gifts, grants, court ordered civil forfeiture proceedings  
20 and bequests of funds or property from individuals, foundations, corporations, the federal  
21 government, governmental agencies and other organizations or institutions. Moneys from gifts,  
22 grants, civil forfeiture proceedings and bequests received by the State Fire Marshal shall be  
23 deposited into the special account set forth in §15A-10-7 of this code, and the State Fire Marshal,  
24 has the authority to make expenditures of, or use of any tangible property, in order to effectuate  
25 the purposes of this article.

26 (f) Beginning July 1, 2020, applicants for certification or licensure in accordance with the  
27 education and training programs under the respective jurisdictions of State Fire Marshal shall be  
28 permitted to apply training hours earned via career technical education provided by West Virginia  
29 public schools or an apprenticeship program or employer-sponsored training program towards  
30 the requirements for certification and/or licensure by the State Fire Marshal as applicable. The  
31 State Fire Marshal shall, after consultation with the State Superintendent of Schools, propose  
32 rules for legislative approval, in accordance with the provisions of §29A-3-1 *et seq.* of this code,  
33 for the implementation and enforcement of these provisions. The rules shall provide at least the  
34 following:

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

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

41 As used in this subsection:

42 (A) "Apprentice" means someone who is enrolled in an apprenticeship program.

43 (B) "Apprenticeship program" means a program offered by an employer to provide  
44 supervised on-the-job training to employees approved by the United States Department of Labor.

45 (C) "Employer sponsored training program" means a program approved in accordance  
46 with a rule promulgated by the State Fire Commission or the State Fire Marshal under their  
47 respective authorities established in this code.

48 (D) "License" means a valid and current certification or license issued by State Fire  
49 Commission or the State Fire Marshal for satisfactory completion of education and training  
50 programs under their respective jurisdictions.

51 (E) "Career technical education" means programs of study, clusters, and pathways  
52 approved by the West Virginia Board of Education pursuant to state board policy.

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

57 (h) Notwithstanding any provision of this code to the contrary, on July 1, 2020, all power  
58 and authority for the licensing or certifications programs of "home inspectors", and "municipal,  
59 county, and other public sector building code officials, building code inspectors, and plans  
60 examiners", are hereby transferred to the Office of the State Fire Marshal, and the State Fire  
61 Marshal shall have full authority over said programs, licenses, certifications, and all  
62 responsibilities thereof. Whenever in this code a reference is made to the State Fire Commission  
63 in relation to these Licensing or Certification Programs, it shall be construed to mean the State  
64 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.**

1 (a) *Enforcement of laws.* — The State Fire Marshal, and any of his or her assistant fire  
2 marshals or deputy fire marshals, are fully authorized to enforce the fire code, the building code,  
3 this article, §15A-11-1 *et seq.* of this code, and any laws over of the state having to do with:

4 (1) Prevention of fire;

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

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

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

12 (5) The suppression of arson; and

13 (6) Any other thing necessary to carry into effect the provisions of this article and §15A-  
14 11-1 *et seq.* of this code including, but not limited to, confiscating any materials, chemicals, items,  
15 or personal property owned, possessed, or used in direct violation of the State Fire Code.

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

25 (c) *Enforcement of rules.* — The State Fire Marshal shall enforce the rules promulgated  
26 by the State Fire Commission as authorized by this article and §15A-11-1 *et seq.* of this code.

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

32 (e) *Right of entry.* — The State Fire Marshal may, at any hour necessary, enter any  
33 building or premises, other than dwelling houses, for the purpose of making an inspection which  
34 he or she may consider necessary under the provisions of this article. The State Fire Marshal and

35 any deputy state fire marshal or assistant state fire marshal approved by the State Fire Marshal  
36 may enter upon any property, or enter any building, structure, or premises, including dwelling  
37 houses during construction and prior to occupancy, for the purpose of ascertaining compliance  
38 with the conditions set forth in any permit or license issued by the office of the State Fire Marshal  
39 pursuant to §15A-10-7 or §29-3B-1 *et seq.* of this code.

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

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

58 (h) *Arrests; warrants.* — The State Fire Marshal, any full-time deputy fire marshal, or any  
59 full-time assistant fire marshal employed by the State Fire Marshal pursuant to this article is

60 hereby authorized and empowered and any person deputized pursuant to this article may be  
61 authorized and empowered by the State Fire Marshal:

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

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

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

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

83 (i) *Witnesses and oaths.* — The State Fire Marshal may issue subpoenas and subpoenas  
84 duces tecum to compel the attendance of persons before him or her to testify in relation to any  
85 matter which is, by the provision of this article, a subject of inquiry and investigation by the State

86 Fire Marshal and cause to be produced before him or her such papers as he or she may require  
87 in making the examination. The State Fire Marshal may administer oaths and affirmations to  
88 persons appearing as witnesses before him or her. False swearing in any matter or proceeding  
89 is considered perjury and is punishable as perjury.

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

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

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

111 (m) *Issuance of permits and licenses.* — The State Fire Marshal may issue permits,  
112 documents, and licenses in accordance with the provisions of this article or §29-3B-1 *et seq.* of  
113 this code: *Provided*, That unless otherwise provided, the State Fire Marshall shall take final action  
114 upon any completed permit applications within 30 days of receipt if the application is uncontested,  
115 or within 90 days if the application is contested. The State Fire Marshal may require any person  
116 who applies for a permit to use explosives, other than an applicant for a license to be a pyrotechnic  
117 operator under §29-3E-6 of this code, to be fingerprinted and to authorize the State Fire Marshal  
118 to conduct a criminal records check through the Criminal Identification Bureau of the West Virginia  
119 State Police and a national criminal history check through the Federal Bureau of Investigation.  
120 The results of any criminal records or criminal history check shall be sent to the State Fire Marshal.

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

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

- 135 (1) Overcrowding places of public assembly;
- 136 (2) Locked or blocked exits in public areas;

- 137 (3) Failure to abate a fire hazard;  
138 (4) Blocking of fire lanes or fire department connections; and  
139 (5) Tampering with, or rendering inoperable, except during necessary maintenance or  
140 repairs, on-premise firefighting equipment, fire detection equipment, and fire alarm systems.

141 (o) *Required training; liability coverage.* — No person deputized pursuant to subsection (j)  
142 of this section may be authorized to issue a citation unless that person has satisfactorily  
143 completed the mandatory training as described in §15A-10-1 of this code, or a law-enforcement  
144 officer training course designed specifically for fire marshals. The course shall be approved by  
145 the Law-enforcement Training Subcommittee of the Governor’s Committee on Criminal Justice  
146 and Highway Safety and the State Fire Commission. In addition, no person deputized pursuant  
147 to subsection (j) of this section may be authorized to issue a citation until evidence of liability  
148 coverage of the person has been provided, in the case of a paid municipal fire department, by the  
149 municipality wherein the fire department is located, or in the case of a volunteer fire department,  
150 by the county commission of the county wherein the fire department is located, or by the  
151 municipality served by the volunteer fire department and that evidence of liability coverage has  
152 been filed with the State Fire Marshal.

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

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

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

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

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

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

**§15A-10-4. Enforcement standards.**

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

6 (b) In interpretation and application, the State Fire Code shall be held to be the minimum  
7 requirements for the safeguarding of life and property from the hazards of fire and explosion:  
8 *Provided,* That the State Fire Marshal shall provide compliance alternatives for historic structures  
9 and sites as provided in §29-1-5 of this code, which compliance alternatives shall take into  
10 account the historic integrity of the historic structures and sites. Whenever any other state law,

11 county or municipal ordinance, or regulation of any agency thereof, is more stringent or imposes  
12 a higher standard than is required by the State Fire Code, the provisions of the state law, county  
13 or municipal ordinance, or regulation of any agency thereof governs, if they are not inconsistent  
14 with the laws of West Virginia and are not contrary to recognized standards and good engineering  
15 practices: *Provided, however,* That, on and after July 1, 2010, if a municipal or county fire  
16 ordinance or regulation of any agency thereof is more stringent or imposes a higher standard than  
17 is required by the State Fire Code, it must be presented for review and approval and sanctioned  
18 for use by the State Fire Commission. In any question, the decision of the State Fire Commission  
19 determines the relative priority of any such state law, county or municipal ordinance, or regulation  
20 of any agency thereof and determines compliance with state fire rules by officials of the state,  
21 counties, municipalities, and political subdivisions of the state.

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

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

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

10 (c) The State Fire Marshal may establish advisory boards as it considers appropriate to  
11 encourage representative participation in subsequent rulemaking from groups or individuals with  
12 an interest in any aspect of the rules promulgated by the State Fire Marshal.

**§15A-10-6. Responsibilities of insurance companies in fire loss investigation.**

1 (a) The State Fire Marshal or any deputy or assistant fire marshals under the authority of  
2 the fire marshal may request any insurance company investigating a fire loss of real or personal  
3 property to release any information in its possession relative to that loss. The company shall  
4 release the information and cooperate with any official authorized to request such information  
5 pursuant to this section. The information shall include, but not be limited to:

6 (1) Any policy in force;

7 (2) Any application for a policy;

8 (3) Premium payment records;

9 (4) History of previous claims; and

10 (5) Material relating to the investigation of the loss, including statements of any person,  
11 proof of loss, and any other relevant evidence.

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

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

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

23 (e) Any official mentioned, or referred to, in subsection (a) of this section may be required  
24 to testify as to any information in his or her possession regarding the fire loss of real or personal

25 property in any civil action in which any person seeks recovery under a policy against an insurance  
26 company for the fire loss.

**§15A-10-7. Fees.**

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

- 3 (1) For blasting;
- 4 (2) For inspections of schools or day-care facilities;
- 5 (3) For inspections of hospitals or nursing homes;
- 6 (4) For inspections of personal care homes or board and care facilities;
- 7 (5) For inspections of residential occupancies;
- 8 (6) For inspections of mercantile occupancies;
- 9 (7) For business occupancies; and
- 10 (8) For inspections of assembly occupancies;

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

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

- 21 (1) Structural barriers and fire safety plans review;
- 22 (2) Sprinkler system review;
- 23 (3) Fire alarm systems review;

24 (4) Range hood extinguishment system review;

25 (5) Carpet specifications;

26 (c) All fees authorized and collected pursuant to this article, §29-3B-1 *et seq.*, §29-3C-1  
27 *et seq.*, and §29-3D-1 *et seq.* of this code shall be paid to the State Fire Marshal and thereafter  
28 deposited into the special account in the State Treasury known as the Fire Marshal Fees Fund.  
29 Expenditures from the fund shall be for the purposes set forth in this article and §29-3B-1 *et seq.*,  
30 §29-3C-1 *et seq.*, and §29-3D-1 *et seq.* of this code and are not authorized from collections but  
31 are to be made only in accordance with appropriation by the Legislature and in accordance with  
32 the provisions of §12-3-1 *et seq.* of this code and upon fulfillment of the provisions of §5A-2-1 *et*  
33 *seq.* of this code. Any balance remaining in the special account at the end of any fiscal year shall  
34 be reappropriated to the next fiscal year.

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

**§15A-10-8. Annual reports.**

1 The State Fire Marshal shall transmit annually to the Governor an annual report, pursuant  
2 to §5-1-20 of this code. Said annual report shall include the activities of the State Fire Commission  
3 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; right to appeal.**

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

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

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

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

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

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

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

1           In the event any owner of any building or premises served with a copy of an order as  
2 provided in §15A-10-9 and §15A-10-10 of this code shall fail substantially to comply with such  
3 order within 30 days from the date of issuance thereof, or within 30 days after any appeal from  
4 such order has been affirmed by the State Fire Marshal or by the court, the State Fire Marshal,  
5 or his or her designee, may enter into and upon the premises affected by such order and cause  
6 the building, structure, or premises to be repaired, torn down, materials removed, and all  
7 dangerous conditions to be remedied, as the case may be, at the expense of the owner and with

8 any administrative charges as established by the State Fire Marshal also being borne by the  
9 owner, and if such person shall fail or neglect to repay the State Fire Marshal the expense and  
10 administrative charge thereby incurred by him or her within 30 days after written demand shall  
11 have been delivered or mailed to the said owner as provided in §15A-10-10 of this code, the State  
12 Fire Marshal is hereby authorized to bring an action in the name of the state to recover such  
13 expenses, with interest, and any administrative charge as established by the commission, in any  
14 court of competent jurisdiction.

15       Upon a determination by the State Fire Marshal that the provisions of §15A-10-9 and  
16 §15A-10-10 of this code have not been met, and that such property constitutes a hazard to health  
17 or public safety, in lieu of initiating an order as therein provided, the State Fire Marshal may notify  
18 the county commission or the county health officer in order that they may perform their duties  
19 pursuant to section §7-1-3ff of this code. The State Fire Marshal may also, in lieu thereof, notify  
20 the municipality where the property is located so that the municipality may perform its duties  
21 pursuant to §8-12-14 of this code.

22       The State Fire Marshal may designate, pursuant to this section, a designee to accomplish  
23 the building, structure, or premises to be repaired, torn down, materials removed, and all  
24 dangerous conditions to be remedied, as the case may be. The designee may include an  
25 employee of the Fire Marshal, an agent of the Fire Marshal, a vendor, a Fire Department and its  
26 employees or agents, or a governmental entity and its employees or agents. Any contract entered  
27 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.**

1       (a) An operational smoke detector shall be installed in the immediate vicinity of each  
2 sleeping area within all one- and two-family dwellings, including any “manufactured home” as that  
3 term is defined in §21-9-2(j) of this code. The smoke detector shall be capable of sensing visible  
4 or invisible particles of combustion and shall meet the specifications and be installed as provided

5 in the current edition of the State Fire Code, and in the manufacturer's specifications. When  
6 activated, the smoke detector shall provide an alarm suitable to warn the occupants of the danger  
7 of fire.

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

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

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

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

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

28 (1) In any newly constructed residential unit which has a fuel-burning heating or cooking  
29 source including, but not limited to, an oil or gas furnace or stove;

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

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

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

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

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

53           (j) Any person installing a carbon monoxide detector in a residential unit shall inform the  
54 owner, lessor, or the occupant or occupants of the residential unit of the dangers of carbon  
55 monoxide poisoning and instructions on the operation of the installed carbon monoxide detector.

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

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

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

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

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

**§15A-10-13. Use of live trees in public buildings; exceptions.**

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

**§15A-10-14. Safety standards for bed and breakfast establishments; findings.**

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

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

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

22           (1) Each bed and breakfast shall have operational smoke alarms in all common areas,  
23 guest rooms, and hallways, and heat detectors as otherwise required by this code or rule of the  
24 Fire Commission. Battery-powered smoke alarms shall be permitted where the establishment has  
25 demonstrated that the testing, maintenance, and battery replacement procedures will ensure

26 reliable power to the smoke alarms. Notwithstanding any provision of this code to the contrary,  
27 no smoking will be allowed inside a bed and breakfast establishment.

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

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

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

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

47 (e) *Historic preservation review.* — The owner of a bed and breakfast may request the  
48 historical preservation section of the Division of Culture and History, pursuant to §15A-1-8 of this  
49 code, to consult with the owner and provide a recommendation to the Fire Marshal regarding the  
50 historic character of the structures used or proposed to be used as a bed and breakfast and any  
51 objections or concerns regarding any renovations or other changes required by the Fire Marshal.

52 If an appeal regarding a decision made by the Fire Marshal is made as provided by §15A-10-18  
53 of this code, the Fire Marshal shall consider the recommendation of the historical preservation  
54 section when making a determination regarding the variance as provided for in subsection (d) of  
55 this section.

**§15A-10-15. Performance of installation of propane gas systems.**

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

4 (b) This section does not apply to any person who performs this work on a single-family  
5 dwelling, owned or leased, and occupied by that person. The personal exemption provided in this  
6 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.**

1 In case any building, structure, or equipment is, or is proposed to be, erected, constructed,  
2 reconstructed, altered, maintained, or used, or any land is or is proposed to be used in such a  
3 way to endanger life or property from the hazards of fire or explosion or in violation of this article,  
4 §15A-11-1 *et seq.* of this code, the fire code or the building code, the State Fire Marshal, or the  
5 Attorney General may, in addition to other remedies provided by law, institute injunction,  
6 mandamus, abatement, or any other appropriate action or actions, proceedings to prevent, enjoin,  
7 abate, or remove such unlawful erection, construction, reconstruction, alteration, maintenance, or  
8 use.

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

1 (a) The State Fire Marshal shall deny, limit, suspend, or revoke a license issued if the  
2 provisions of this article, or if the rules promulgated pursuant to this article or §15A-11-1 *et seq.*  
3 of this code are violated

4 (b) Before any such license is denied, limited, suspended, or revoked, however, written  
5 notice shall be given to the licensee stating the grounds for such denial, limitation, suspension, or  
6 revocation.

7 (c) An applicant or licensee has 10 working days after receipt of the order denying, limiting,  
8 suspending, or revoking a license to request a formal hearing contesting the denial, limitation,  
9 suspension, or revocation of a license under this article. If a formal hearing is requested, the  
10 applicant or licensee and the secretary shall proceed in accordance with the provisions of §29A-  
11 5-1 *et seq.* of this code.

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

16 (e) A party aggrieved by a decision by the State Fire Marshal may appeal such final  
17 decision to the Office of Administrative Hearings, pursuant to §15A-9-1 *et seq.* of this code, or  
18 may choose independent informal dispute resolution as set forth in this article.

**§15A-10-18. Independent informal dispute resolution.**

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

5 (b) The State Fire Marshal has the authority to establish conference panels composed of  
6 three persons of the licensed or certified skill to decide the outcome of the independent informal  
7 dispute resolution process. One member shall be selected by the State Fire Marshal, one member  
8 shall be selected by the licensee or certificate holder, and one member shall be selected by  
9 agreement of both. If a vacancy occurs on the panel, the replacement for that member shall be  
10 made by the original individual who had selected such member. The members of the panel shall

11 serve without compensation. This panel shall hear the matter and render a decision. The licensee  
12 or certificate holder may not be accompanied by counsel during the independent informal dispute  
13 resolution conference.

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

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

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

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

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

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

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

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

1 Every insurance company doing business in this state, except Farmers' Mutual Fire  
2 Insurance companies, shall pay to the State Insurance Commissioner annually on or before

3 March 1, in addition to the taxes now required by law to be paid by the companies, one half of  
4 one percent of the taxable premiums of the companies on insurance against the hazard of fire  
5 and on that portion of all other taxable premiums reasonably applicable to insurance against the  
6 hazard of fire which are included in other coverages, and received by it for insurance on property  
7 or risks in this state during the calendar year next preceding as shown by their annual statement  
8 under oath to the insurance department. The money so received by the State Insurance  
9 Commissioner is paid by him or her into the treasury and credited to the Special Revenue Fund  
10 created in §15A-10-7 of this code.

**§15A-10-22. Penalties.**

1 (a) Any person who violates any regulations promulgated by the State Fire Commission  
2 as provided in §15A-11-1 *et seq.* of this code, or by the State Fire Marshal as provided in this  
3 article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$100  
4 or confined in the county jail not more than 90 days, or both.

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

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

14 (c) Any person who violates the provisions of §15A-10-20 of this code with the intent to  
15 cause injury to the person of another, to cause destruction of the property of another, or to divert  
16 the attention of law enforcement or fire personnel to help effectuate the commission of another  
17 crime shall be guilty of a felony and, upon conviction thereof, shall be confined in a state

18 correctional facility for not less than one nor more than three years, or fined not more than \$500,  
19 or both fined and confined.

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

23 (e) Any person who violates any other provision of this article is guilty of a misdemeanor  
24 and, upon conviction thereof, shall be fined not more than \$100 or confined in jail not more than  
25 90 days, or both fined and confined.

**§15A-10-23. Construction.**

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

**§15A-10-24. Severability.**

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

**§15A-10-25. Awarding service weapon upon retirement of fire marshal or service weapon.**

1 (a) Upon the retirement of a State Fire Marshal, any full-time deputy fire marshal or any  
2 full-time assistant fire marshal employed by the State Fire Marshal pursuant to this article shall  
3 award to the retiring member his or her service weapon, without charge, upon determining:

- 4 (1) That the retiring employee is retiring honorably with at least 20 years of service; or  
5 (2) The retiring employee is retiring with less than 20 years of service based upon a  
6 determination that the employee is totally physically disabled as a result of his or her service with  
7 the State Fire Marshal.

8 (b) Notwithstanding the provisions of subsection (a) of this section, the State Fire Marshal  
9 may not award a service weapon to any employee whom the State Fire Marshal knows is

10 prohibited from possessing a firearm, finds to be mentally incapacitated, or who constitutes a  
11 danger to any person or the community.

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

## **ARTICLE 11. FIRE COMMISSION.**

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

1 (a) The Fire Commission is hereby continued, which shall consist of 13 voting members,  
2 with the State Fire Marshal sitting as an ex officio nonvoting member. The voting members shall  
3 be qualified by experience and training to deal with the matters which are the responsibilities of  
4 the commission. All current members of the commission are continued in their respective term.  
5 The officers of the West Virginia Fire Chief's Association, the West Virginia Firemen's Association,  
6 the West Virginia Professional Fire Fighters Association, the West Virginia Professional Fire  
7 Chiefs Association, the West Virginia Manufacturers Association, the Professional Independent  
8 Insurance Agents of West Virginia, and the West Virginia Society of Architects shall submit a list  
9 of names of persons recommended by each of these associations to the Governor for  
10 consideration in appointing the State Fire Commission. The West Virginia Professional Fire  
11 Fighters Association and the West Virginia Professional Fire Chiefs Association shall recommend  
12 the names of two persons from full-time paid fire departments. The West Virginia Fire Chief's  
13 Association and the West Virginia Firemen's Association shall each recommend the names of  
14 three persons from volunteer fire departments. The West Virginia Manufacturers Association shall  
15 recommend the names of three persons to represent business and industry. The Professional

16 Independent Insurance Agents of West Virginia shall recommend the names of two persons to  
17 represent the fire insurance industry. The West Virginia Society of Architects shall recommend  
18 the names of two persons to represent registered architects. Appointments to the commission  
19 shall be made by the Governor, by and with the advice and consent of the Senate, from the lists  
20 of qualified persons recommended by the organizations. Three members shall be appointed to  
21 represent full-time paid fire departments, one member shall be appointed to represent the full-  
22 time paid fire chiefs, three members shall be appointed to represent volunteer fire departments,  
23 and two members shall be appointed to represent the volunteer fire chiefs. Two members shall  
24 be appointed to represent business and industry and one member shall be appointed to represent  
25 the fire insurance industry. One member shall be appointed to represent registered architects.  
26 The term of office of the members shall be staggered five-year terms. Vacancies shall be filled in  
27 the same manner as the original appointment but only for the remainder of a term. All members  
28 serve at the will and pleasure of the Governor, and may be removed for any or no reason.

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

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

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

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

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

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

- 1 (a) Pursuant to the provisions of § 29A-3- 1 *et seq.* of this code, the State Fire Commission  
2 shall propose and promulgate comprehensive rules for the safeguarding of life and property from  
3 the hazards of fire and explosion to be known as the State Fire Code. Rules embodied in the  
4 State Fire Code shall be in accordance with standard safe practice as embodied in widely  
5 recognized standards of good practice for fire prevention and fire protection and have the force  
6 and effect of law in the several counties, municipalities, and political subdivisions of the state.  
7 The rule shall include, but not be limited to, standard safe practices for the design, construction,  
8 location, installation, maintenance, and operation of liquefied petroleum gas systems, and training  
9 standards and qualifications for persons who install or maintain liquefied petroleum gas systems.
- 10 (b) The State Fire Commission may establish work groups and seek input in the  
11 rulemaking process from groups or individuals with an interest in any aspect of the fire code.

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

- 1 (a) The State Fire Commission shall promulgate rules pursuant to §29A-3-1 *et seq.* of this  
2 code establishing criteria for qualified training programs in hazardous substance emergency  
3 response activities and procedures for such qualified training programs to be certified by the State  
4 Fire Marshal.
- 5 (b) For the purposes of this section, “hazardous substance” means any hazardous  
6 substance as defined in chapter 88, Acts of the Legislature, regular session, 1985, any “chemical  
7 substances and materials” listed in the rules promulgated by the Commissioner of Labor pursuant  
8 to §21-3-8 of this code, and any “hazardous waste” as defined in §22-18-1 *et seq.* of this code.

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

- 1 (a) The State Fire Commission shall propose rules for legislative approval in accordance  
2 with the provisions of §29A-3-1 *et seq.* of this code to safeguard life and property and to ensure  
3 the quality of construction of all structures erected or renovated throughout this state through the  
4 adoption of a State Building Code. The rule may include provisions regarding building

5 construction, renovation, and all other aspects as related to the construction and mechanical  
6 operations of a structure. The rule shall include building energy codes. The rules shall be in  
7 accordance with standard safe practices so embodied in widely recognized standards of good  
8 practice for building construction and all aspects related thereto and have force and effect in those  
9 counties and municipalities adopting the State Building Code: *Provided*, That each county or  
10 municipality may adopt the code to the extent that it is only prospective and not retroactive in its  
11 application.

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

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

27 (d) Enforcement of the provisions of the State Building Code is the responsibility of the  
28 respective local jurisdiction. Also, any county or municipality may enter into an agreement with  
29 any other county or municipality to provide inspection and enforcement services: *Provided*, That

30 any county or municipality may adopt the State Building Code with or without adopting the BOCA  
31 National Property Maintenance Code.

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

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

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

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

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

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

1 For the purposes of any public hearing under this article, the State Fire Commission is  
2 empowered and authorized to issue subpoenas and subpoenas duces tecum, to take testimony,  
3 and to administer oaths to any witness in any proceeding or examination instituted before it or  
4 conducted by it with reference to any matter within its jurisdiction. In all hearings or proceedings

5 before the State Fire Commission, the evidence of witnesses and the production of documentary  
6 evidence may be required at any designated place of hearing; and in case of disobedience to a  
7 subpoena or other process, the State Fire Commission or any party to the proceedings before the  
8 commission may invoke the aid of any circuit court in requiring the evidence and testimony of  
9 witnesses and the production of papers, books, and documents. Such court, in case of refusal to  
10 obey the subpoena issued to any person subject to the provisions of this chapter, shall issue an  
11 order requiring such person to appear before the State Fire Commission and produce all books  
12 and papers, if so ordered, and give evidence touching the matter in question.

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

1 (a) All state and area training and education in fire service shall be coordinated by the  
2 State Fire Commission. The State Fire Marshal shall ensure that these programs are operated  
3 throughout the state at a level consistent with needs identified by the commission.

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

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

10 (d) The State Fire Commission shall develop a plan for fire prevention and control which  
11 shall include, but not be limited to, the following areas: manpower needs, location of training  
12 centers, location of fire prevention and control units, communications, fire-fighting facilities, water  
13 sources, vehicular needs, public education and information, public participation, standardization  
14 in recordkeeping, evaluation of personnel, reporting of fire hazards, programs on mutual aid,  
15 location of public safety agencies, outline of fire prevention programs, and accessibility of fire  
16 prevention information.

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

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

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

- 31 (1) Fire prevention and control;
- 32 (2) Uniform standards of performance, equipment, and training;
- 33 (3) Certification;
- 34 (4) Training and education in fire service, subject to the rule-making requirements set forth  
35 in section nine of this article; and
- 36 (5) The creation, operation, and responsibilities of fire departments throughout the state.

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

41 (i) The State Fire Commission may deny, suspend, or revoke certification of any fire  
42 department in the State of West Virginia if a fire department is not in compliance with all applicable  
43 laws, rules, and regulations.

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

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

1 (a) The State Fire Commission shall maintain oversight and authority over training,  
2 equipment requirements, and performance standards for volunteer fire departments and its  
3 members, establishing and maintaining said requirements pursuant to legislative rule, in  
4 accordance with the provisions of §29A-3-1 *et seq.* of this code, to establish training requirements  
5 for firefighters which:

6 (1) Provide for:

7 (A) Minimum training levels for rescue and firefighting;

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

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

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

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

18 (3) Provide for online training;

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

20 (5) Establish the testing requirements which include:

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

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

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

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

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

33 (3) On July 1 of each year, the State Fire Commission shall annually provide a full  
34 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.**

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

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

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

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

11 (3) Submits any required fee.

12 (c) Issuance of a courtesy certification shall not be withheld by the State Fire Commission  
13 based on an individual's failure to satisfy the training requirements for volunteer firefighters set  
14 forth in legislative rules promulgated pursuant to §15A-11-9 of this code.

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

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

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

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

23 (h) Appeals from any final decision of the Fire Commission shall be heard by the Office of  
24 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.**

1 (a) *Definitions.* — For the purposes of this section:

2 "Equipment and training grant" means a grant of money to a volunteer fire company or a  
3 part-volunteer fire department from the Fire Service Equipment and Training Fund created in  
4 §15A-11-11 of this code;

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

8           “State funds account” means a bank account established by a volunteer or part-volunteer  
9 fire company or department and maintained for the exclusive use and accounting of money from  
10 formula distributions and equipment and training grants.

11           (b) *Filing required documentation.* — Every volunteer and part-volunteer fire company or  
12 department seeking to receive formula distributions or an equipment and training grant shall file  
13 copies of bank statements and check images from the company’s or department’s state funds  
14 account for the previous calendar year with the Legislative Auditor on or before February 1 of  
15 each year.

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

25           (d) *State Auditor.* — Whenever the State Auditor performs an audit of a volunteer or part-  
26 volunteer fire company or department for any purpose, the Auditor shall also conduct an audit of  
27 other state funds received by the company or department pursuant to §33-3-14d, §33-3-33, and  
28 §33-12C-7 of this code. The Auditor shall send a copy of the audit to the Legislative Auditor. The  
29 Legislative Auditor may accept an audit performed by the Auditor in lieu of performing an audit  
30 under this section.

31           (e) *Withholding of funds.* —The Treasurer is authorized to withhold payment of a formula  
32 distribution or an equipment and training grant from a volunteer or part-volunteer fire company or

33 department, when properly notified by the Legislative Auditor pursuant to this section, of any of  
34 the following conditions:

35 (1) Failure to file, in a timely manner, copies of bank statements and check images with  
36 the Legislative Auditor;

37 (2) Failure to cooperate with a review or audit conducted by the Legislative Auditor;

38 (3) Misapplication of state funds; or

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

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

53 (g) *Noncooperation.* — If, in the course of an audit or review by the Legislative Auditor, a  
54 volunteer or part-volunteer fire company or department fails to provide documentation of its  
55 accounts and expenditures in response to a request of the Legislative Auditor, the Legislative  
56 Auditor shall notify the State Treasurer who shall withhold payment of any amount that would  
57 otherwise be distributed to the company or department under the provisions of §33-3-14d, §33-

58 3-33, and §33-12C-7 of this code until the Legislative Auditor informs the State Treasurer that the  
59 company or department has cooperated with the review or audit.

60 (h) *Reporting of other grants.* — Nothing in this section alters the duties and  
61 responsibilities of a volunteer or part-volunteer fire company or department imposed under §12-  
62 4-14 of this code if that company or department has received funds from any state grant program  
63 other than from the Fire Service Equipment and Training Fund. If the Legislative Auditor is notified  
64 by a grantor that a volunteer or part-volunteer fire company or department has failed to file a  
65 report or a sworn statement of expenditures for a state grant it received, the Legislative Auditor  
66 shall notify the State Treasurer who shall withhold further distributions to the company or  
67 department in the manner provided in this section.

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

82 (j) *Misuse of state money.* — If the Legislative Auditor determines that a volunteer or part-  
83 volunteer fire company or department has used formula distribution money for purposes not

84 authorized by §8-15-8b of this code or has used equipment and training grant money for purposes  
85 not authorized by the grant program, the Legislative Auditor shall give a written notice of  
86 noncompliance to the company or department. If a volunteer or part-volunteer fire company or  
87 department disagrees or disputes the finding, the company or department may contest the finding  
88 by submitting a written objection to the Legislative Auditor within five working days of receipt of  
89 the Legislative Auditor's finding. The department or company shall then have 60 days from the  
90 date of the Legislative Auditor's finding to provide documentation to substantiate that the  
91 expenditures were made for authorized purposes. If the volunteer or part-volunteer fire company  
92 or department does not dispute the findings of the Legislative Auditor or if the company or  
93 department is not able to substantiate an authorized purpose for the expenditure, the Legislative  
94 Auditor shall notify the Treasurer of the amount of misapplied money and the Treasurer shall  
95 deduct that amount from future distributions to that company or department until the full amount  
96 of unauthorized expenditure is offset.

## **CHAPTER 19. AGRICULTURE.**

### **ARTICLE 1. DEPARTMENT OF AGRICULTURE.**

#### **§19-1-4. Duties of commissioner.**

1 The Commissioner of Agriculture shall perform the following duties:

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

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

10 (c) Conduct cooperative work with the United States Department of Agriculture in  
11 inspecting and determining the grade and condition of farm produce at collecting centers,  
12 receiving centers, and shipping points;

13 (d) Induce the investment of capital in, and immigration into, this state by the dissemination  
14 of information relative to the soil, climate, health, natural resources, market opportunities, and  
15 advantages of the state;

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

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

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

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

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

34 (j) Enter into an agreement with the Secretary of the Department of Veterans' Assistance  
35 to transfer without consideration all or part of the approximately 17 acres of Department of

36 Agriculture property in Beckley, West Virginia, located adjacent to the Jackie Withrow Hospital  
37 which was formerly known as Pinecrest Hospital, for construction of a veterans skilled nursing  
38 facility;

39 (k) Propose rules, including regulatory standards, for legislative approval in accordance  
40 with the provisions of §29A-3-1 *et seq.* of this code for the purpose of carrying out the  
41 requirements of this chapter; and

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

## **ARTICLE 21A. CONSERVATION DISTRICTS.**

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

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

- 4 (1) Four citizen members;
- 5 (2) The following ex officio members or his or her designee:
- 6 (A) The Director of the state Cooperative Extension Service;
- 7 (B) The Director of the State Agricultural and Forestry Experiment Station;
- 8 (C) The Secretary of the Department of Environmental Protection;
- 9 (D) The State Commissioner of Agriculture, who is the chairperson of the committee;
- 10 (E) The Director of the Division of Forestry; and
- 11 (F) The President of the West Virginia Association of Conservation Districts.

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

16 (c) The committee may invite the Secretary of Agriculture of the United States of America  
17 to appoint one person to serve with the committee as an advisory member.

18 (d) The committee shall keep a record of its official actions, shall adopt a seal, which shall  
19 be judicially noticed, and may perform those acts, hold public hearings, and adopt or propose for  
20 legislative approval rules necessary for the execution of its functions under this article.

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

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

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

42 (2) Provide for the keeping of a full and accurate public record of all proceedings and of  
43 all resolutions, rules, and orders issued or adopted;

44 (3) Provide for an annual audit of the accounts of receipts and disbursements; and

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

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

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

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

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

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

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

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

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

68 (8) Administer a conservation grant program that provides financial assistance to  
69 conservation districts and others to promote approved conservation projects;

70 (9) Accept and receive donations, gifts, contributions, grants, and appropriations in money,  
71 services, materials, or otherwise from the United States or any of its agencies, from the State of  
72 West Virginia, or from other sources and use or expend the money, services, materials, or other  
73 contributions in carrying out the policy and provisions of this article, including the right to allocate  
74 the money, services, or materials in part to the various conservation districts created by this article  
75 in order to assist them in carrying on their operations;

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

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

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

94 authority shall continue for the duration of the Governor's proclamation or the federal disaster  
95 declaration.

## CHAPTER 20. NATURAL RESOURCES.

### ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

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

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

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

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

21 (3) Conduct research in improved conservation methods and disseminate information  
22 matters to the residents of the state;

23 (4) Conduct a continuous study and investigation of the habits of wildlife and, for purposes  
24 of control and protection, to classify by regulation the various species into such categories as may  
25 be established as necessary;

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

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

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

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

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

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

45 (11) Acquire for the state in the name of the Division of Natural Resources by purchase,  
46 condemnation, lease or agreement, or accept or reject for the state, in the name of the Division

47 of Natural Resources, gifts, donations, contributions, bequests, or devises of money, security or  
48 property, both real and personal, and any interest in such property, including lands and waters,  
49 which he or she deems suitable for the following purposes:

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

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

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

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

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

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

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

64 (13) Sell timber for not less than the value thereof, as appraised by a qualified appraiser  
65 appointed by the director, from all lands under the jurisdiction and control of the director, except  
66 those lands that are designated as state parks and those in the Kanawha State Forest. The  
67 appraisal shall be made within a reasonable time prior to any sale, reduced to writing, filed in the  
68 office of the director and shall be available for public inspection. The director must obtain the  
69 written permission of the Governor to sell timber when the appraised value is more than \$5,000.  
70 The director shall receive sealed bids therefor, after notice by publication as a Class II legal  
71 advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code and the publication  
72 area for the publication shall be each county in which the timber is located. The timber so

73 advertised shall be sold at not less than the appraised value to the highest responsible bidder,  
74 who shall give bond for the proper performance of the sales contract as the director shall  
75 designate; but the director may reject any and all bids and re-advertise for bids. If the foregoing  
76 provisions of this section have been complied with and no bid equal to or in excess of the  
77 appraised value of the timber is received, the director may, at any time, during a period of six  
78 months after the opening of the bids, sell the timber in such manner as he or she deems  
79 appropriate, but the sale price may not be less than the appraised value of the timber advertised.  
80 No contract for sale of timber made pursuant to this section may extend for a period of more than  
81 10 years. And all contracts heretofore entered into by the state for the sale of timber may not be  
82 validated by this section if a contract is otherwise invalid. The proceeds arising from the sale of  
83 the timber so sold shall be paid to the Treasurer of the State of West Virginia and shall be credited  
84 to the division and used exclusively for the purposes of this chapter: *Provided*, That nothing  
85 contained herein may prohibit the sale of timber which otherwise would be removed from rights-  
86 of-way necessary for and strictly incidental to the extraction of minerals;

87 (14) Sell or lease, with the approval in writing of the Governor, coal, oil, gas, sand, gravel,  
88 and any other minerals that may be found in the lands under the jurisdiction and control of the  
89 director, except those lands that are designated as state parks. The director, before making sale  
90 or lease thereof, shall receive sealed bids therefor, after notice by publication as a Class II legal  
91 advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the  
92 publication area for such publication shall be each county in which such lands are located. The  
93 minerals so advertised shall be sold or leased to the highest responsible bidder, who shall give  
94 bond for the proper performance of the sales contract or lease as the director shall designate; but  
95 the director may reject any and all bids and re-advertise for bids. The proceeds arising from any  
96 such sale or lease shall be paid to the Treasurer of the State of West Virginia and shall be credited  
97 to the division and used exclusively for the purposes of this chapter;

98           (15) Exercise the powers granted by this chapter for the protection of forests and regulate  
99 fires and smoking in the woods or in their proximity at such times and in such localities as may be  
100 necessary to reduce the danger of forest fires;

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

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

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

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

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

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

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

121           (23) Encourage and cooperate with other public and private organizations or groups in  
122 their efforts to publicize the attractions of the state including, completing the feasibility study for  
123 the Beech Fork State Park Lodge as follows:

- 124 (a) The director shall convene, prior to October 1, 2019, two public hearings:
- 125 (i) An initial public hearing shall be for the purpose of seeking public input regarding
- 126 options for the construction of a lodge and a conference center, including all available public,
- 127 private, or public-private partnership (PPP) funding and financing options; and
- 128 (ii) A subsequent public hearing at which the feasibility study and any recommendation
- 129 shall be available for public comment;
- 130 (b) The public hearings required by this subdivision must be held in a suitable location
- 131 reasonably close to Beech Fork State Park so as to accommodate public participation from the
- 132 citizens of Cabell, Lincoln, and Wayne counties; and
- 133 (c) Upon completion of the feasibility study it shall be submitted by the director to the Joint
- 134 Committee on Government and Finance on or before December 1, 2019;
- 135 (24) Accept and expend, without the necessity of appropriation by the Legislature, any gift
- 136 or grant of money made to the division for all purposes specified in this chapter and he or she
- 137 shall account for and report on all such receipts and expenditures to the Governor;
- 138 (25) Cooperate with the state historian and other appropriate state agencies in conducting
- 139 research with reference to the establishment of state parks and monuments of historic, scenic,
- 140 and recreational value and to take such steps as may be necessary in establishing the
- 141 monuments or parks as he or she deems advisable;
- 142 (26) Maintain in his or her office at all times, properly indexed by subject matter and also
- 143 in chronological sequence, all rules made or issued under the authority of this chapter. The
- 144 records shall be available for public inspection on all business days during the business hours of
- 145 working days;
- 146 (27) Delegate the powers and duties of his or her office, except the power to execute
- 147 contracts not related to land and stream management, to appointees and employees of the
- 148 division, who shall act under the direction and supervision of the director and for whose acts he
- 149 or she shall be responsible;

150 (28) Conduct schools, institutions, and other educational programs, apart from or in  
151 cooperation with other governmental agencies, for instruction and training in all phases of the  
152 natural resources programs of the state;

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

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

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

163 (32) Exempt designated sections within the Division of Natural Resources from the  
164 requirement that all payments must be deposited in a bank within 24 hours for amounts less than  
165 \$500, notwithstanding any other provision of this code to the contrary: *Provided*, That such  
166 designated sections shall make a deposit in any amount no less than every seven working days;  
167 and

168 (33) Cooperate with the State Resiliency Office to the fullest extent practicable to assist  
169 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.**

1 (a) The secretary is the chief executive officer of the department. Subject to §22-1-7 of  
2 this code and other provisions of law, the secretary shall organize the department into such

3 offices, sections, agencies, and other units of activity as may be found by the secretary to be  
4 desirable for the orderly, efficient, and economical administration of the department, and for the  
5 accomplishment of its objects and purposes. The secretary may appoint a deputy secretary, chief  
6 of staff, assistants, hearing officers, clerks, stenographers and other officers, technical personnel,  
7 and employees needed for the operation of the department and may prescribe their powers and  
8 duties and fix their compensation within amounts appropriated.

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

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

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

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

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

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

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

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

46 (4) Require any applicant or holder of a permit to install, establish, modify, operate, or  
47 close a solid waste facility to furnish the fingerprints of the applicant or permittee; any officer,  
48 director, or manager of the applicant or permittee; any person owning a five percent or more  
49 interest, beneficial or otherwise, in the applicant's or permittee's business; or any other person  
50 conducting or managing the affairs of the applicant or permittee or of the proposed licensed  
51 premises, in whole or in part. These fingerprints may be used to obtain and review any police  
52 record for the purposes set may be relevant pursuant to §20-15-5 of this code, and to use the  
53 fingerprints furnished to conduct a criminal records check through the Criminal Identification

54 Bureau of the West Virginia State Police and a national criminal history check through the Federal  
55 Bureau of Investigation. The results of the checks shall be provided to the secretary.

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

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

68 (7) Issue certifications required under 33 U.S.C. §1341 of the federal Clean Water Act and  
69 enter into agreements in accordance with the provisions of §22-11-7a of this code. Prior to issuing  
70 any certification the secretary shall solicit from the Division of Natural Resources reports and  
71 comments concerning the possible certification. The Division of Natural Resources shall direct  
72 the reports and comments to the secretary for consideration;

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

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

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

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

93 (g) The secretary shall receive an annual salary as provided in §6-7-2a of this code and  
94 is allowed and shall be paid necessary expenses incident to the performance of his or her official  
95 duties. Prior to the assumption of the duties of his or her office, the secretary shall take and  
96 subscribe to the oath required of public officers prescribed by section five, article IV of the  
97 Constitution of West Virginia and shall execute a bond, with surety approved by the Governor, in  
98 the penal sum of \$10,000, which executed oath and bond will be filed in the Office of the Secretary  
99 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.**

1 [Repealed]

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

1 [Repealed]

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

1 [Repealed]

**§29-3-4. Chairman; vice chairman; meetings; quorum.**

1 [Repealed]

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

1 [Repealed]

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

1 [Repealed]

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

1 [Repealed]

**§29-3-5c. Liquefied petroleum gas systems.**

1 [Repealed]

**§29-3-5d. Volunteer firefighters' training.**

1 [Repealed]

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

1 [Repealed]

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

1 [Repealed]

**§29-3-6. Public hearings and notice.**

1 [Repealed]

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

1 [Repealed]

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

1 [Repealed]

**§29-3-9. Powers, duties and authority of State Fire Commission and State Fire Marshal.**

1 [Repealed]

**§29-3-10. State fire marshal's 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.**

[Repealed]

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

1 [Repealed]

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

1 [Repealed]

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

1 [Repealed]

**§29-3-12b. Fees.**

1 [Repealed]

**§29-3-13. Annual reports.**

1 [Repealed]

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

1 [Repealed]

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

1 [Repealed]

**§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.**

1 [Repealed]

**§29-3-16a. Smoke detectors in one- and two-family dwellings; carbon monoxide detectors in residential units, schools, and daycare facilities; penalty.**

1 [Repealed]

**§29-3-16b. Use of live trees in public buildings; exceptions.**

1 [Repealed]

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

1 [Repealed]

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

1 [Repealed]

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

1 [Repealed]

**§29-3-18. Appellate procedure generally.**

1 [Repealed]

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

1 [Repealed]

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

1 [Repealed]

**§29-3-22. Tax on insurance companies.**

1 [Repealed]

**§29-3-27. Penalties.**

1 [Repealed]

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

1 [Repealed]

**§29-3-29. Construction.**

1 [Repealed]

**§29-3-30. Severability.**

1 [Repealed]

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

1 [Repealed]

**ARTICLE 31. STATE RESILIENCY AND FLOOD PROTECTION PLAN ACT.**

**§29-31-2. State Resiliency Office**

1 (a) It is determined that a state authority is required to provide a coordinated effort for  
2 emergency and disaster planning, response, recovery, and resiliency between government  
3 agencies, first responders, and all other entities to reduce the loss of life and property, lessen the  
4 impact of future disasters, respond quickly to save lives, protect property and the environment,  
5 meet basic human needs, and provide economic growth and resilience in the aftermath of an  
6 incident. Therefore, the State Resiliency Office is hereby created. The office shall be organized  
7 within the Office of the Governor. The office will serve as the recipient of disaster recovery and  
8 resiliency funds, excluding federal Stafford Act funds, and the coordinating agency of recovery  
9 and resiliency efforts, including matching funds for other disaster recovery programs, excluding  
10 those funds and efforts under the direct control of the State Resiliency Officer pursuant to §15-5-  
11 4b and §15-5-24 of this code for a particular event.

12 (b)(1) The State Resiliency Office Board is also established and shall consist of the  
13 following members: the Secretary of the Department of Commerce or his or her designee; the  
14 Director of the Division of Natural Resources or his or her designee; the Secretary of the  
15 Department of Environmental Protection or his or her designee; the Executive Director of the  
16 State Conservation Agency or his or her designee; the President of the West Virginia Emergency  
17 Management Council or his or her designee; the Secretary of the Department of Homeland

18 Security or his or her designee; the Secretary of Transportation or his or her designee; the  
19 Adjutant General of the West Virginia National Guard or his or her designee; the Director of the  
20 Division of Emergency Management within the Department of Homeland Security or his or her  
21 designee; two nonvoting members of the West Virginia Senate, to be appointed by the President  
22 of the Senate; and two nonvoting members of the West Virginia House of Delegates, to be  
23 appointed by the Speaker of the House of Delegates.

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

30 (3) The board shall:

31 (A) Provide for the keeping of a full and accurate record of all proceedings and of all  
32 resolutions, rules, and orders issued or adopted and of its other official actions;

33 (B) Shall adopt a seal, which shall be judicially noticed;

34 (C) Provide for an annual audit of the accounts of receipts and disbursements of the State  
35 Resiliency Office; and

36 (D) Perform those acts necessary for the execution of its functions under this article.

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

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

42 (3) The State Resiliency Officer shall be a person who has:

43 (A) At least five years' managerial or strategic planning experience in matters relating to  
44 flood control and hazard mitigation or, alternatively, in disaster recovery, emergency  
45 management, or emergency response;

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

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

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

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

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

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

67 (D) If the State Resiliency Officer has his or her primary experience in flood control and  
68 hazard mitigation then his or her deputy must have experience in disaster recovery, emergency

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

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

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

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

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

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

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

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

93 (6) Identify, prioritize, and evaluate issues affecting implementation of mitigation and  
94 adaptation actions, including, but not limited to, the effect of loss of land in context of zoning and

95 other land use regulations, possible conflicts between public hazard mitigation/adaptation  
96 planning and private property interests (e.g. buy-out programs, projects to increase flood storage),  
97 develop guidance for cities and towns, real estate professionals, property owners under existing  
98 law and regulations; and develop proposals for changes in laws, policies, and regulations, as  
99 needed;

100 (7) Ensure all counties and municipalities have up to date Hazard Mitigation Plans and  
101 Local Comprehensive Disaster Plans that are consistent with and coordinated to the state's  
102 Hazard Mitigation Plans and Comprehensive Disaster Plans; including, but not limited to, assisting  
103 them in developing planning guidance for cities and towns to complete and/or update Hazard  
104 Mitigation Plans; providing technical assistance to help counties and municipalities meet these  
105 standards; and provide notice to counties and municipalities of funding opportunities to implement  
106 projects outlined in their Hazard Mitigation Plans;

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

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

119 (10) Establish emergency permitting procedures to expedite issuance of state permits  
120 following disasters, and develop guidance (model procedures) for political subdivisions to follow;  
121 and

122 (11) Establish a model long-term recovery plan that would be activated after catastrophic  
123 events.

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

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

129 (f) Notwithstanding any other provisions of this code:

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

132 (2) The following are exempt from public disclosure under the provisions of chapter 29B  
133 of this code:

134 (A) All deliberations of the board;

135 (B) The materials, in any medium, including hard copy and electronic, placed in the  
136 custody of the board as a result of any of its duties; and

137 (C) All records of the board, in the possession of the board, and generated by the board,  
138 due to their falling under several exceptions to public disclosure including, but not limited to, that  
139 for security or disaster recovery plans and risk assessments.

**§29-31-3. Authority of State Resiliency Office and State Resiliency Officer.**

1 The State Resiliency Office will coordinate the state's disaster response mission and the  
2 State Resiliency Officer serve as the primary representative of the Governor. The State Resiliency  
3 Officer shall, upon the order and direction of the Governor, act on behalf of the Governor in the  
4 event of the proclamation of the existence of a state of emergency or state of preparedness under

5 the provisions of §15-5-6 of this code. The State Resiliency Officer will assist and advise the  
6 Governor on all disaster response issues and serve as a liaison between the Governor's office,  
7 and all other parties, whether state, federal, public, or private to further the purposes of this article.

8 The State Resiliency Officer will:

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

12 (2) Coordinate an annual review of the state flood protection plan and update the plan no  
13 less than biannually;

14 (3) Recommend legislation to reduce or mitigate flood damage;

15 (4) Report to the Joint Legislative Committee on Flooding at least quarterly;

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

19 (6) Coordinate planning of flood projects with federal agencies;

20 (7) Improve professional management of flood plains;

21 (8) Provide education and outreach on flooding issues to the citizens of this state;

22 (9) Establish a single website integrating all agency flood information;

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

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

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

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

31           (14) Establish and facilitate regular communication between federal, state, local, and  
32 private sector agencies and organizations to further economic and disaster resilience;

33           (15) Receive resources, monetary or otherwise, from any other governmental entity and  
34 disburse those resources to effectuate the purposes of this article;

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

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

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

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

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

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

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

56 (23) Have the ability to secure all other bonding, insurance or other liability protections  
57 necessary for its employees to fulfill their duties and responsibilities;

58 (24) Have the ability to draw upon other departments, divisions, agencies, and all other  
59 subdivisions of the state for research and input in fulfilling the requirements of this article, and its  
60 requests are to have priority over other such requests;

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

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

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

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

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

1 The State Resiliency Officer shall report, at a minimum of quarterly, to the Joint Legislative  
2 Committee on Flooding, created pursuant to §4-15-1 *et seq.* of this code, in sufficient detail for  
3 the committee to be aware of the activities of the office to assure progress toward reducing and  
4 mitigating flood damage within this state while respecting and complying with the Takings Clause  
5 of the United States Constitution, the West Virginia Constitution, and related precedential court  
6 opinions, and to develop legislative recommendations and shall submit an annual report to the  
7 committee by December 31 of each year, along with any recommended legislation, budget  
8 requests and a summary of the activities of the office for the previous year.

**§29-31-5. Employees.**

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

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

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

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

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

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

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

## **CHAPTER 33. INSURANCE.**

### **ARTICLE 2. INSURANCE COMMISSIONER.**

#### **§33-2-23. Creation of the State Office of the National Flood Insurance Program; responsibilities.**

1 (a) The Legislature, finding that the National Flood Insurance Program is a voluntary  
2 federal program under which federal flood insurance is made available to participating  
3 communities is of vital importance to the citizens of West Virginia, does hereby create the State  
4 Office of the National Flood Insurance Program, to be housed in the office of the Insurance  
5 Commissioner of West Virginia, and which office shall administer this program.

6 (b) The State Office of the National Flood Insurance Program shall have a coordinator  
7 who shall issue such regulations, guidance, and instructions as necessary to effectively  
8 administer the program. The coordinator shall conduct trainings and will adopt and enforce  
9 adequate land use and development criteria that are consistent with the minimum standards  
10 established by the National Flood Insurance Program and shall report to the Insurance  
11 Commissioner.

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

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

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

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

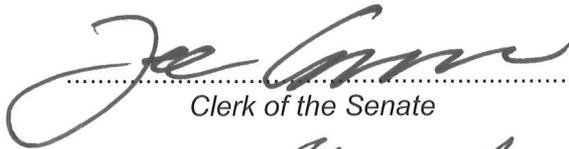
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
.....  
Chairman, Senate Committee

  
.....  
Chairman, House Committee

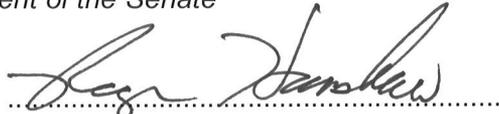
Originated in the Senate.

In effect 90 days from passage.

  
.....  
Clerk of the Senate

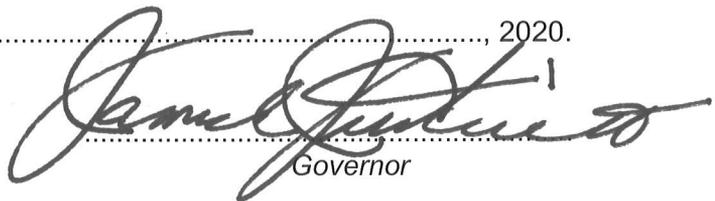
  
.....  
Clerk of the House of Delegates

  
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President of the Senate

  
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Speaker of the House of Delegates

FILED  
2020 MAR 25 P 4: 08  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

The within is approved this the 25th  
Day of March ....., 2020.

  
.....  
Governor

PRESENTED TO THE GOVERNOR

MAR 10 2020

Time 10:56am