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Reps. Brady, Gray, Hensley, Osienski; Sens. Hansen,
Paradee

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 82

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO THE JURISDICTION OF THE
DELAWARE STATE FIRE PREVENTION COMMISSION AND COMMISSION TERMS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 6602, Title 16 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 6602. State Fire Prevention Commission — Appointment; qualifications; cause for removal; term of office;
4 members to serve without compensation.

5 (a) The State Fire Prevention Commission shall consist of 7 commissioners as follows: 3 representatives of
6 business and industry to include one from each county to be appointed by the Governor; 3 Delaware volunteer firefighters
7 to include one from each county to be appointed by the Governor; and the immediate past president of the Delaware
8 Volunteer Firefighters' Association persons who shall be qualified by experience and training to deal with the matters
9 which are the responsibilities of the State Fire Prevention Commission. Three members of the State Fire Prevention
10 Commission shall be appointed by the Governor and shall be representatives of industry from New Castle County, Kent
11 County and Sussex County. Three members, 1 from each county, shall be members of paid or volunteer fire companies and
12 shall be appointed by the Governor from a list of 3 names of members in good standing submitted by the Volunteer
13 Firefighters' Association of the county in which a vacancy exists. The seventh member of the State Fire Prevention
14 Commission shall be the immediate past President of the Delaware Volunteer Firefighters' Association and shall be
15 appointed by the Governor.

16 (b) The Firefighter Commissioners shall be recommended to the Governor by each Delaware Volunteer
17 Firefighters' Association County President of the county in which the expired term or vacancy exists within 60 days prior
18 to the expiration of a Commissioner's term or within 30 days following a vacancy. Each recommendation shall include 3
19 nominees and any and all necessary information required by the Governor regarding the nominee's qualifications to serve
20 as a Commissioner.

21 (c) Business and industry Commissioners shall have knowledge in the areas of the Commission's jurisdiction and
22 be employed within an industry regulated by or under the authority of the Commissioner.

23 (b) ~~(d) Commissioners~~ Members may be removed by the Governor for continued neglect of the duties required by
24 this chapter, or for refusal to act, misconduct, incompetency, or other sufficient cause. Missing 3 consecutive meetings shall
25 presumptively be neglect of duty for purposes of this section.

26 ~~(e) (e) Commissioners~~ Members of the State Fire Prevention Commission shall be appointed to serve four-year
27 terms and shall not serve more than 3 terms to ensure that the terms of no more than 2 Commissioners expire in one year
28 for 6-year terms, but no member may be appointed to more than 2 successive full terms. Succeeding appointments shall be
29 made, and any vacancy on the State Fire Prevention Commission shall be filled for the duration of the term, in the same
30 manner as the prior appointment.

31 ~~(d) (f) Commissioners~~ Members shall serve without compensation but shall be reimbursed for their actual and
32 necessary expenses incurred in the performance of their duties.

33 ~~(e) (g) No Commissioner~~ member of the State Fire Prevention Commission, while serving on the State Fire
34 Prevention Commission, shall be an officer of any kind (president/chairperson, president-elect, vice president, secretary,
35 board of director, or treasurer) of any state or county volunteer firemen's association, including but not limited to, the
36 Delaware Volunteer Firefighter's Association, or any professional board, commission, or trade association, or union
37 representing an industry or service regulated by the State Fire Prevention Commission. No Commissioner shall hold a
38 politically elected or appointed position.

39 Section 2. Amend § 6603, Title 16 of the Delaware Code by making deletions as shown by strike through and
40 insertions as shown by underline as follows:

41 § 6603. State Fire Prevention Commission — Organization and meetings.

42 (a) The ~~State Fire Prevention Commission~~ shall ~~select~~ elect a Chairperson and Vice Chairperson from among its
43 Commissioners ~~members~~ and shall hold regular meetings at least once a month. Special meetings may be called by the
44 Chairperson, by the Vice Chairperson in the absence of the Chairperson, or by 3 Commissioners ~~members of the State Fire~~
45 ~~Prevention Commission.~~

46 (b) No business shall be transacted by the ~~State Fire Prevention~~ Commission in the absence of a quorum which
47 shall be 4 ~~members~~ Commissioners, 1 of which must be the Chairperson or Vice Chairperson.

48 Section 3. Amend § 6604, Title 16 of the Delaware Code by making deletions as shown by strike through and
49 insertions as shown by underline as follows:

50 § 6604. State Fire Prevention Commission — Powers and duties.

51 The State Fire Prevention Commission shall have authority to:

52 (1) Formulate rules and regulations, with appropriate notice to those affected; all rules and regulations shall be
53 promulgated in accordance with the procedures specified in the Administrative Procedures Act (Chapter 101 of Title
54 29) of this State.

55 a. Such regulations shall be in accordance with standard safe practice as embodied in widely recognized
56 standards of good practice for fire prevention and fire protection and shall have the force and effect of law in the
57 several counties, cities and political subdivisions of the State. Whenever such regulations and amendments require
58 the issuance of permits or licenses, the State Fire Prevention Commission is authorized to issue such permits or
59 licenses according to the provisions and schedules in § 6612 of this title. Such regulations and amendments shall
60 not apply to existing installations, plants or equipment unless the State Fire Prevention Commission has duly
61 found that the continuation thereof constitutes a hazard so inimicable to the public welfare and safety as to require
62 correction; nor shall such regulations and amendments limit or prohibit the shipment, transportation, handling or
63 storage incident to transportation of any explosive, combustible or other dangerous article in solid, liquid or gas
64 form by rail, water or highway, when such articles are in conformity with regulations of the Interstate Commerce
65 Commission; nor shall such regulations, insofar as they purport to prohibit the sale, purchase or domestic use of
66 gasoline, kerosene or other fuel burning home appliances for heating or cooking apply to any person whose
67 personal faith or belief prevents the use of any alternative heating or cooking appliance recommended by the State
68 Fire Prevention Commission, the burden of proof is upon the person claiming relief from such regulation. In their
69 interpretation and application the regulations promulgated under this chapter shall be held to be the minimum
70 requirements for the safeguarding of life and property from the hazards of fire and explosion. Whenever the
71 provisions of any other statute or local regulation are more stringent or impose higher standards than are required
72 by any regulations promulgated under this chapter, such statute or local regulation shall govern, provided they are
73 not inconsistent with the state Code and are not contrary to recognized standards and good engineering practices.

74 b. Promulgate regulations consistent with the following language: The State Fire Marshal shall require
75 that all persons involved in the inspection and testing of water-based fire protection systems maintain current
76 certification in the National Institute for Certification in Engineering Technologies (NICET II) "Inspection and
77 Testing of Water-based Systems" certification program or a substantially similar and equivalent course of
78 instruction, as determined by the State Fire Marshal, as a condition of permit renewal after July 1, 2010.

79 c. Promulgate regulations consistent with the following language: The State Fire Marshal shall require
80 that persons involved in the inspection and testing of water-based fire protection systems shall complete 16 contact
81 hours of continuing education or similar course of instruction during each biennial period of renewal. Any and all

82 continuing education requirements completed pursuant to paragraph (1)b. of this section may be used to meet the
83 continuing education requirements as called for under this section.

84 (2) Appoint a person qualified by that person's previous training and experience in endeavors similar to
85 those herein prescribed as the State Fire Prevention Commission Executive Director. The position will be exempt
86 upon its vacancy. The Executive Director shall provide to the Commission all of the following:

87 a. Reports and data necessary to enable the Commission to perform its duties under this title.

88 b. Coordination and implementation of all requirements for Commission meetings, including
89 posting meeting notices and minutes.

90 c. Necessary reports and data in conjunction with the Commissions responsibilities.

91 d. Support to Commission members in necessary training and preparation to fulfill their roles
92 and responsibilities.

93 e. Service as the Commission's point of contact.

94 f. Production and posting of minutes for each Commission meeting.

95 g. Oversight of the day-to-day operations of the agency.

96 h. Management of the support staff of the agency.

97 ~~(2)~~(3) Appoint a person qualified by that person's previous training and experience in endeavors similar to
98 those herein prescribed as State Fire Marshal.

99 ~~(3)~~(4) Appoint a person qualified by that person's previous training and experience in endeavors similar to
100 those described herein as the State Fire School Director.

101 ~~(4)~~(5) Conduct hearings and issue orders in accordance with procedures established pursuant to this chapter
102 and Chapter 101 of Title 29. Where such provisions conflict with this chapter, this chapter shall govern.

103 ~~(5)~~(6) Issue subpoenas for named respondents, witnesses, documents, physical evidence or any other source of
104 evidence needed during the investigation of a complaint made under this chapter and/or for a public hearing on the
105 complaint or for an appeal to the State Fire Prevention Commission from an order or decision of the State Fire
106 Marshal. If the party or person subpoenaed fails to comply, the State Fire Prevention Commission may compel
107 compliance with said subpoena by filing a motion to compel in the Superior Court which shall have jurisdiction. The
108 Superior Court may order costs, attorney's fees and/or a civil fine not to exceed \$1,000 if the motion to compel is
109 granted.

110 ~~(6)~~(7) Acquire any real or personal property by purchase, gift or donation and have water rights.

111 ~~(7)~~(8) Make contracts and execute instruments necessary or convenient.

112 (8)(9) Undertake by contract or contracts, or by its own agent and employees, and otherwise than by contract,
113 any project or projects, and operate and maintain such projects.

114 (9)(10) Accept grants of money or materials or property of any kind from a federal agency, private agency,
115 county, city, town, corporation, partnership or individual upon such terms and conditions as the grantor may impose.

116 (11) Impose fines for violations of the requirements of this chapter and to impose reasonable fees for all
117 certifications issued by the Commission under this chapter and Chapter 67 of this Title, such fines and fees to be
118 collected and retained by the Commission to defray the costs and expenses associated with its enforcement of these
119 chapters and regulations promulgated thereunder.

120 (12) Impose substance abuse evaluation and treatment by third party vendors in lieu of imposing discipline
121 upon respondents within the jurisdiction of the Commission.

122 (10)(13) Perform all acts and do all things necessary or convenient to carry out the power granted herein.

123 Section 4. Amend § 6605, Title 16 of the Delaware Code by making deletions as shown by strike through and
124 insertions as shown by underline as follows:

125 ~~§ 6605. State Fire Prevention Commission Advisory Board.~~

126 ~~For the purpose of advising and make recommendations to the State Fire Prevention Commission in connection~~
127 ~~with the State Fire Prevention Commission's responsibilities regarding regulatory changes, there is hereby created the State~~
128 ~~Fire Commission Advisory Board. The State Fire Commission Advisory Board shall be composed of 7 members. One~~
129 ~~member shall be the Chairperson of the Fire School Advisory Board, 1 member shall be the Chairperson of the Fire~~
130 ~~Marshal's Advisory Board, 1 member shall be the Chairperson of the Ambulance Advisory Committee and 1 member shall~~
131 ~~be the Chairperson of the Delaware Volunteer Firefighter's Advisory Board. Three members shall be public members~~
132 ~~appointed by the State Fire Prevention Commission. One public member shall be from New Castle County, 1 from Kent~~
133 ~~County and 1 from Sussex County. Of the initial 3 public members appointed by the State Fire Prevention Commission, 1~~
134 ~~must be appointed for a 1-year term, 1 must be appointed for a 2-year term and 1 must be appointed for a 3-year term.~~
135 ~~Thereafter, all public members shall serve 1-year terms. The Chairperson of the State Fire Prevention Commission shall call~~
136 ~~the Advisory Board to its first meeting. The Advisory Board shall choose a Chairperson and shall meet thereafter at the call~~
137 ~~of the Chairperson of the Advisory Board or the Chairperson of the State Fire Prevention Commission.~~

SYNOPSIS

This bill seeks to amend sections of Chapter 66 concerning the Delaware State Fire Prevention by: imposing a timeframe on the Delaware Volunteer Firefighters' Association to recommend nominate Commission members to the Governor; imposing a presumption of neglect if a Commissioner misses three consecutive Commission meetings; adjusting the terms and term limits of the Commissioners; to prohibit a Commissioner from also serving in a politically elected or appointed position while serving as a Commissioner; and to eliminate the requirement for an Advisory Board. The Commission also creates an Executive Director position, which will be currently filled by a current Commission employee

serving in that function. That bill makes clear that that person's current merit status will remain, but will become an exempt position when the position next becomes vacant. The bill proposes to authorize the imposition of fines for violations of applicable Code and regulatory provisions and reasonable fees for Commission's certifications to help defray costs and expenses with the Commission's administration and enforcement of its powers under the Code and its regulations. Finally, the bill proposes to make several amendments to clarify and synthesize language in other sections of Chapter 66.