SPONSOR: Rep. D. Short & Rep. Carson & Sen. Ennis
Reps. Brady, Gray, Hensley, Osienski; Sen. Paradee

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 82
AS AMENDED BY
HOUSE AMENDMENT NO. 4

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 (Three-fifths of all members elected to each house thereof concurring therein):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The State Fire Prevention Commission shall have authority to:

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

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

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

c. Promulgate regulations consistent with the following language: The State Fire Marshal shall require that persons involved in the inspection and testing of water-based fire protection systems shall complete 16 contact hours

of continuing education or similar course of instruction during each biennial period of renewal. Any and all continuing education requirements completed pursuant to paragraph (1)b. of this section may be used to meet the continuing education requirements as called for under this section.

(2) Create a State Fire Prevention Commission Executive Director. The position will be exempt and will be effective 30 days after the enactment of this Act. The Executive Director shall provide the Commission all of the following:

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

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

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

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

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

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

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

h. Management of the support staff of the agency.

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

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

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

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

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

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

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

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

(11) Impose any civil penalty or fine authorized under this chapter.

(12) Impose reasonable fees for all certifications issued by the Commission under this chapter or Chapter 67 of this title. All fees issued under this section must be based on actual costs, unless otherwise specifically authorized by other provisions of this title.

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

~~(10)~~(14) Perform all acts and do all things necessary or convenient to carry out the power granted herein.

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

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

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