

VIRGINIA ACTS OF ASSEMBLY -- 2007 SESSION

CHAPTER 647

An Act to amend and reenact §§ 9.1-201, 27-61, 27-97, 27-97.2, 27-99, 36-139, and 38.2-401 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 2 of Title 9.1 sections numbered 9.1-206, 9.1-207, and 9.1-208; and to repeal §§ 36-139.2, 36-139.3, and 36-139.4 of the Code of Virginia, relating to the Office of the State Fire Marshal; powers and duties.

[H 2356]

Approved March 20, 2007

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-201, 27-61, 27-97, 27-97.2, 27-99, 36-139, and 38.2-401 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 2 of Title 9.1 sections numbered 9.1-206, 9.1-207, and 9.1-208 as follows:

§ 9.1-201. Powers of Executive Director.

The Executive Director shall have the following powers to:

1. Supervise the administration of the Department;
2. Prepare, approve, and submit all requests for appropriations and be responsible for all expenditures pursuant to appropriations;
3. Employ such staff as is necessary to carry out the powers and duties of this chapter, within the limits of available appropriations;
4. Accept on behalf of the Department grants from the United States government and agencies and instrumentalities thereof and any other sources. To these ends, the Executive Director shall have the power to execute such agreements in accordance with the policies of the Virginia Fire Services Board;
5. Do all acts necessary or convenient to carry out the purpose of this chapter and to assist the Board in carrying out its responsibilities and duties;
6. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter, including, but not limited to, contracts with the United States, other states, and agencies and governmental subdivisions of the Commonwealth;
7. Appoint a director of fire services training;
8. Receive funds as appropriated by the General Assembly collected pursuant to § 38.2-401, on an annual basis to be used as provided in subsection C of § 38.2-401; ~~and~~
9. Administer the Thermal Imaging Camera Grant Funds established pursuant to § 9.1-205; *and*
10. *Administer the provisions of the Statewide Fire Prevention Code (§ 27-94 et seq.).*

§ 9.1-206. *State Fire Marshal; qualifications; powers and duties; power to arrest, to procure and serve warrants and to issue summonses; limitation on authority.*

The Executive Director of Fire Programs shall employ a State Fire Marshal and other personnel necessary to carry out the provisions of the Statewide Fire Prevention Code (§ 27-94 et seq.). The State Fire Marshal and other personnel employed pursuant to this section shall be selected upon the basis of education or experience in administering laws and regulations designed to prevent and eliminate hazards to life and property arising from fire.

The State Fire Marshal shall have the powers and duties prescribed by the Statewide Fire Prevention Code (§ 27-94 et seq.), by § 27-61, by Board regulation and by the Director. The State Fire Marshal and those persons duly authorized to enforce the Statewide Fire Prevention Code shall have the authority to arrest, to procure and serve warrants of arrests and to issue summonses in the manner authorized by general law for violation of the Statewide Fire Prevention Code. The authority granted in this section shall not be construed to authorize the State Fire Marshal to wear or carry firearms. All personnel employed pursuant to this section shall meet the training requirements set forth for local fire marshals in § 27-34.2.

§ 9.1-207. *Inspection of certain state-owned, state-operated, or state-licensed facilities; enforcement of safety standards.*

Notwithstanding any other provisions of this chapter, the State Fire Marshal, upon presenting appropriate credentials, shall make annual inspections for hazards incident to fire in all (i) residential care facilities operated by any state agency, (ii) assisted living facilities licensed or subject to licensure pursuant to Chapter 18 (§ 63.2-1800 et seq.) of Title 63.2 that are not inspected by the local fire marshal, (iii) student residence facilities owned or operated by a public institution of higher education, and (iv) public schools that are not inspected by the local fire marshal. In the event that any such facility or residence is found to be nonconforming to the Statewide Fire Prevention Code, the State Fire Marshal or local fire marshal may petition any court of competent jurisdiction for the issuance of an injunction.

§ 9.1-208. *Agreements between Department and other agencies.*

The Department is hereby authorized to enter into agreements with federal agencies, other state agencies, and political subdivisions for services related to enforcement and administration of laws, rules, or regulations or ordinances of such agencies affecting fire safety in public buildings.

§ 27-61. When Department or fire chief may remedy inflammable or unsafe conditions.

The Department of ~~Housing and Community Development~~ *Fire Programs*, by its representative, or the chief or other head of the fire department of any county, city or town or district thereof, shall have the right, at all reasonable hours, for the purpose of examination, to enter into and upon any public school building or any other building or premises not at the time occupied and used as a dwelling house, within their respective jurisdictions, for examination as to combustible materials or inflammable or unsafe conditions in any such building or upon any such premises. Upon complaint of any person having an interest in any building or premises or property adjacent thereto, in his jurisdiction, an officer shall make an immediate investigation as to the presence of any combustible materials or the existence of inflammable or unsafe conditions in such buildings or upon such premises. Whenever any officer finds in any building or upon any premises combustible, inflammable or unsafe conditions, dangerous to the safety of the building or premises, or other property, he shall order the same to be removed or remedied, and the order shall, within a reasonable time to be fixed in the order, be complied with by the owner or occupant of the building or premises.

Any owner or occupant aggrieved by such order may within five days after notice of such order, appeal to the Department of ~~Housing and Community Development~~ *Fire Programs*, and the cause of his complaint shall be at once investigated by the *Executive* Director of the Department of ~~Housing and Community Development~~ *Fire Programs*, and unless by its authority such order is revoked, the order shall remain in force and the owner or occupant shall comply with the order.

Any owner or occupant of any building or premises failing to comply with any final order made or given under the authority of this section, shall be deemed guilty of a misdemeanor, and punished by a fine of not less than \$5 nor more than \$100 for each offense.

§ 27-97. Adoption of Fire Prevention Code.

The Board of Housing and Community Development is hereby empowered to adopt and promulgate a Statewide Fire Prevention Code which shall be cooperatively developed with the Fire Services Board pursuant to procedures agreed to by the two Boards. The Fire Prevention Code shall prescribe regulations to be complied with for the protection of life and property from the hazards of fire or explosion and for the handling, storage, sale and use of fireworks, explosives or blasting agents, and shall provide for the administration and enforcement of such regulations. The Fire Prevention Code shall require manufacturers of fireworks or explosives, as defined in the Code, to register and report information concerning their manufacturing facilities and methods of operation within the Commonwealth in accordance with regulations adopted by the Board. In addition to conducting criminal background checks pursuant to § 27-97.2, the Board shall also establish regulations for obtaining permits for the manufacturing, storage, handling, use, or sales of fireworks or explosives. In the enforcement of such regulations, the enforcing agency may issue annual permits for such activities to any state regulated public utility. Such permits shall not apply to the storage, handling, or use of explosives or blasting agents pursuant to the provisions of Title 45.1.

The Fire Prevention Code shall prohibit any person, firm, or corporation from transporting, manufacturing, storing, selling, offering for sale, exposing for sale, or buying, using, igniting, or exploding any fireworks except for those persons, firms, or corporations that manufacture, store, market and distribute fireworks for the sole purpose of fireworks displays permitted by an enforcement agency or by any locality.

The Fire Prevention Code shall supersede fire prevention regulations heretofore adopted by local governments or other political subdivisions. Local governments are hereby empowered to adopt fire prevention regulations that are more restrictive or more extensive in scope than the Fire Prevention Code provided such regulations do not affect the manner of construction, or materials to be used in the erection, alteration, repair, or use of a building or structure, including the voluntary installation of smoke alarms and regulation and inspections thereof in commercial buildings where such smoke alarms are not required under the provisions of the Code.

In formulating the Fire Prevention Code, the Board shall have due regard for generally accepted standards as recommended by nationally recognized organizations including, but not limited to, standards of the ~~Southern Building Code Congress~~, the ~~Building Officials and Code Administrators International~~, ~~Inc.~~ *International Code Council*, the National Fire Protection Association, and recognized organizations issuing standards for the protection of the public from the hazards of explosives and blasting agents. Such standards shall be based on the companion document to the model building code referenced by the Uniform Statewide Building Code.

The Fire Prevention Code shall require that buildings constructed prior to 1973 be maintained in accordance with state fire and public building regulations in effect prior to March 31, 1986, and that any building which is (i) more than seventy-five feet or more than six stories high and (ii) used, in whole or in part, as a dormitory to house students by any public or private institution of higher education shall be required to comply with the provisions of § 36-99.3. The Fire Prevention Code shall also require annual

fire drills in all buildings having floors used for human occupancy located more than seventy-five feet above the lowest level of fire department vehicle access. The drills shall be conducted by building staff personnel or the owner of the building in accordance with a plan approved by the appropriate fire official and shall not affect other current occupants. The Board may modify, amend or repeal any Code provisions as the public interest requires. Any such Code changes shall be developed in cooperation with the Fire Services Board pursuant to procedures agreed to by the two Boards.

§ 27-97.2. Issuance of permit; background investigations.

A. The ~~Board~~ *State Fire Marshal* or other issuing authority shall consider all permit applications for manufacturing, storage, handling, use or sales of explosives and applications for certification as a blaster, and may grant a valid permit or certification to applicants who meet the criteria established in the ~~regulations of the Board~~ *Statewide Fire Prevention Code*. The ~~Board~~ *State Fire Marshall* shall require a background investigation, to include a national criminal history record information check, of all individual applicants and all designated persons representing an applicant that is not an individual, for a permit to manufacture, store, handle, use or sell explosives, and for any applicant for certification as a blaster. Each such applicant shall submit his fingerprints to the ~~Board~~ *State Fire Marshall* on a form provided by the ~~Board~~ *State Fire Marshal* and provide personal descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining a national criminal history record check regarding such applicant. Any firm or company manufacturing, storing, using, or selling explosives shall provide to the enforcement agency, ~~Board~~ *the State Fire Marshal* or other issuing authority the name of a representative responsible for (i) ensuring compliance with state law and regulations relating to blasting agents and explosives and (ii) applying for permits. The ~~Board~~ *State Fire Marshal* or other issuing authority shall deny any application for a permit or for certification as a blaster if the applicant or designated person representing an applicant has been convicted of any felony, whether such conviction occurred under the laws of the Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof, unless his civil rights have been restored by the Governor or other appropriate authority.

B. No permit under this section shall be required of any person holding a certification or permit issued pursuant to the provisions of Title 45.1.

§ 27-99. State buildings.

The Fire Prevention Code shall be applicable to all state-owned buildings and structures. Every agency, commission or institution, including all institutions of higher education, of the Commonwealth shall permit, at all reasonable hours, a local fire official reasonable access to existing structures or a structure under construction or renovation, for the purposes of performing an informational and advisory fire safety inspection. The local fire official may submit, subsequent to performing such inspection, his findings and recommendations including a list of corrective actions necessary to ensure that such structure is reasonably safe from the hazards of fire to the appropriate official of such agency, commission, or institution and the State Fire Marshal. Such agency, commission or institution shall notify, within sixty days of receipt of such findings and recommendations, the State Fire Marshal and the local fire official of the corrective measures taken to eliminate the hazards reported by the local fire official. The State Fire Marshal shall have the same power in the enforcement of this section as is provided for in § 27-98.

The State Fire Marshal may enter into an agreement as is provided for in § ~~36-139.4~~ *9.1-207* with any local enforcement agency that enforces the Fire Prevention Code to enforce this section and to take immediate enforcement action upon verification of a complaint of an imminent hazard such as a chained or blocked exit door, improper storage of flammable liquids, use of decorative materials and overcrowding.

§ 36-139. Powers and duties of Director.

The Director of the Department of Housing and Community Development shall have the following responsibilities:

1. Collecting from the governmental subdivisions of the Commonwealth information relevant to their planning and development activities, boundary changes, changes of forms and status of government, intergovernmental agreements and arrangements, and such other information as he may deem necessary.
2. Making information available to communities, planning district commissions, service districts and governmental subdivisions of the Commonwealth.
3. Providing professional and technical assistance to, and cooperating with, any planning agency, planning district commission, service district, and governmental subdivision engaged in the preparation of development plans and programs, service district plans, or consolidation agreements.
4. Assisting the Governor in the providing of such state financial aid as may be appropriated by the General Assembly in accordance with § 15.2-4216.
5. Administering federal grant assistance programs, including funds from the Appalachian Regional Commission, the Economic Development Administration and other such federal agencies, directed at promoting the development of the Commonwealth's communities and regions.
6. Developing state community development policies, goals, plans and programs for the consideration

and adoption of the Board with the ultimate authority for adoption to rest with the Governor and the General Assembly.

7. Developing a Consolidated Plan to guide the development and implementation of housing programs and community development in the Commonwealth for the purpose of meeting the housing and community development needs of the Commonwealth and, in particular, those of low-income and moderate-income persons, families and communities.

8. Determining present and future housing requirements of the Commonwealth on an annual basis and revising the Consolidated Plan, as necessary to coordinate the elements of housing production to ensure the availability of housing where and when needed.

9. Assuming administrative coordination of the various state housing programs and cooperating with the various state agencies in their programs as they relate to housing.

10. Establishing public information and educational programs relating to housing; devising and administering programs to inform all citizens about housing and housing-related programs that are available on all levels of government; designing and administering educational programs to prepare families for home ownership and counseling them during their first years as homeowners; and promoting educational programs to assist sponsors in the development of low and moderate income housing as well as programs to lessen the problems of rental housing management.

11. Administering the provisions of the Industrialized Building Safety Law (§ 36-70 et seq.).

12. Administering the provisions of the Uniform Statewide Building Code (§ 36-97 et seq.).

13. Administering the provisions of the Statewide Fire Prevention Code (§ 27-94 et seq.).

14. Establishing and operating a Building Code Academy for the training of persons in the content, application, and intent of specified subject areas of the building and fire prevention regulations promulgated by the Board of Housing and Community Development.

15. 14. Administering, in conjunction with the federal government, and promulgating any necessary regulations regarding energy standards for existing buildings as may be required pursuant to federal law.

16. 15. Identifying and disseminating information to local governments about the availability and utilization of federal and state resources.

17. 16. Administering, with the cooperation of the Department of Health, state assistance programs for public water supply systems.

18. 17. Advising the Board on matters relating to policies and programs of the Virginia Housing Partnership Revolving Fund.

19. 18. Designing and establishing program guidelines to meet the purposes of the Virginia Housing Partnership Revolving Fund and to carry out the policies and procedures established by the Board.

20. 19. Preparing agreements and documents for loans and grants to be made from the Virginia Housing Partnership Revolving Fund; soliciting, receiving, reviewing and selecting the applications for which loans and grants are to be made from such fund; directing the Virginia Housing Development Authority as to the closing and disbursing of such loans and grants and as to the servicing and collection of such loans; directing the Virginia Housing Development Authority as to the regulation and monitoring of the ownership, occupancy and operation of the housing developments and residential housing financed or assisted by such loans and grants; and providing direction and guidance to the Virginia Housing Development Authority as to the investment of moneys in such fund.

21. 20. Advising the Board on matters relating to policies for the low-income housing credit and administering the approval of low-income housing credits as provided in § 36-55.63.

22. 21. Establishing and administering program guidelines for a statewide homeless intervention program.

23. 22. Administering 15 percent of the Low Income Home Energy Assistance Program (LIHEAP) Block Grant and any contingency funds awarded and carry over funds, furnishing home weatherization and associated services to low-income households within the Commonwealth in accordance with applicable federal law and regulations.

24. 23. Developing a strategy concerning the expansion of affordable, accessible housing for older Virginians and Virginians with disabilities, including supportive services.

25. 24. Serving as the Executive Director of the Commission on Local Government as prescribed in § 15.2-2901 and perform all other duties of that position as prescribed by law.

26. 25. Developing a strategy, in consultation with the Virginia Housing Development Authority, for the creation and implementation of housing programs and community development for the purpose of meeting the housing needs of persons who have been released from federal, state, and local correctional facilities into communities.

27. 26. Carrying out such other duties as may be necessary and convenient to the exercise of powers granted to the Department.

§ 38.2-401. Fire Programs Fund.

A. 1. There is hereby established in the state treasury a special nonreverting fund to be known as the Fire Programs Fund, hereinafter referred to as "the Fund." The Fund shall be administered by the Department of Fire Programs under policies and definitions established by the Virginia Fire Services Board. All moneys collected pursuant to the assessment made by the Commission pursuant to

subdivision 2 of this subsection shall be paid into the state treasury and credited to the Fund. The Fund shall also consist of any moneys appropriated thereto by the General Assembly and any grants or other moneys received by the Virginia Fire Services Board or Department of Fire Programs for the purposes set forth in this section. Any moneys deposited to or remaining in such Fund during or at the end of each fiscal year or biennium, including interest thereon, shall not revert to the general fund but shall remain in the Fund. Interest earned on all moneys in the Fund and interest earned on moneys held by the Commission pursuant to subdivision 2 of this subsection prior to the deposit of such moneys into the Fund, including interest earned on such moneys during any period when the Commission is reconciling payments from insurers, shall remain in or be deposited into the Fund, as the case may be, and be credited to it. Such interest shall be set aside for fire service purposes in accordance with policies developed by the Virginia Fire Services Board. Notwithstanding any other provision of law to the contrary, policies established by the Virginia Fire Services Board for the administration of the Fund, and any grants provided from the Fund, that are not inconsistent with the purposes set out in this section shall be binding upon any locality that accepts such funds or related grants. The Commission shall be reimbursed from the Fund for all expenses necessary for the administration of this section. The balance of moneys in the Fund shall be allocated periodically as provided in this section. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Executive Director of the Department of Fire Programs (Director) or his designee.

2. The Commission shall annually assess against all licensed insurance companies doing business in the Commonwealth by writing any type of insurance as defined in §§ 38.2-110, 38.2-111, 38.2-126, 38.2-130 and 38.2-131 and those combination policies as defined in § 38.2-1921 that contain insurance as defined in §§ 38.2-110, 38.2-111 and 38.2-126, an assessment in the amount of one percent of the total direct gross premium income for such insurance. Such assessment shall be apportioned, assessed and paid as prescribed by § 38.2-403. In any year in which a company has no direct gross premium income or in which its direct gross premium income is insufficient to produce at the rate of assessment prescribed by law an amount equal to or in excess of \$100, there shall be so apportioned and assessed against such company a contribution of \$100.

B. After reserving funds for the Fire Services Grant Program and Dry Fire Hydrant Grant Program pursuant to subsection D, 75 percent of the remaining moneys available for allocation from the Fund shall be allocated to the several counties, cities and towns of the Commonwealth providing fire service operations to be used for the improvement of volunteer and career fire services in each of the receiving localities. Funds allocated to the counties, cities and towns pursuant to this subsection shall not be used directly or indirectly to supplant or replace any other funds appropriated by the counties, cities and towns for fire service operations. Such funds shall be used solely for the purposes of training volunteer or career firefighting personnel in each of the receiving localities; funding fire prevention and public safety education programs; constructing, improving and expanding regional or local fire service training facilities; purchasing emergency medical care and equipment for fire personnel; payment of personnel costs related to fire and medical training for fire personnel; or for purchasing personal protective equipment, vehicles, equipment and supplies for use in the receiving locality specifically for fire service purposes. Notwithstanding any other provision of the Code, when localities use such funds to construct, improve or expand fire service training facilities, fire-related training provided at such training facilities shall be by instructors certified or approved according to policies developed by the Virginia Fire Services Board. Distribution of this 75 percent of the Fund shall be made on the basis of population as provided for in §§ 4.1-116 and 4.1-117; however, no county or city eligible for such funds shall receive less than \$10,000, nor eligible town less than \$4,000. The Virginia Fire Services Board shall be authorized to exceed allocations of \$10,000 for eligible counties and cities and \$4,000 for eligible towns, respectively. Allocations to counties, cities, and towns receiving such allocations shall be fair and equitable as set forth in Board policy. Any increases or decreases in such allocations shall be uniform for all localities. In order to remain eligible for such funds, each receiving locality shall report annually to the Department on the use of the funds allocated to it for the previous year and shall provide a completed Fire Programs Fund Disbursement Agreement form. Each receiving locality shall be responsible for certifying the proper use of the funds. If, at the end of any annual reporting period, a satisfactory report and a completed agreement form have not been submitted by a receiving locality, any funds due to that locality for the next year shall not be retained. Such funds shall be added to the 75 percent of the Fund allocated to the counties, cities, and towns of the Commonwealth for improvement of fire services in localities.

C. The remainder of the moneys available for allocation from the Fund shall be used for (i) the purposes of carrying out the powers and duties assigned to the Department of Fire Programs under Chapter 2 (§ 9.1-200) of Title 9.1, which shall include providing funded training and administrative support services for nonfunded training to localities and (ii) the payment of the compensation and costs of expenses of the members of the Fire Services Board in performing their official duties; *however, the Fund shall not be used for salaries or operating expenses associated with the Office of the State Fire Marshal.*

D. The Fire Services Grant Program is hereby established and will be used as grants to provide regional fire services training facilities, to finance the Virginia Fire Incident Reporting System and to build or repair burn buildings as determined by the Virginia Fire Services Board. Beginning January 1, 1996, \$1 million from the assessments made pursuant to this section shall be distributed each year for the Fire Services Grant Program to be used as herein provided, and \$100,000 shall be distributed annually for continuing the statewide Dry Fire Hydrant Grant Program. Moneys allocated pursuant to this subsection shall be used for the purposes stated in this subsection, and for no other purpose. All grants provided from these programs shall be administered by the Department according to the policies established by the Virginia Fire Services Board.

E. Moneys in the Fund shall not be diverted or expended for any purpose not authorized by this section.

F. The Director shall establish written standards for determining the extent to which clients outside the Commonwealth shall be financially responsible for the cost of fire and emergency services training provided by the Department of Fire Programs. Revenues generated by such training shall be retained in the Fire Programs Fund and may be used solely for providing additional funded direct training to members of Virginia's fire and emergency services.

- 2. That §§ 36-139.2, 36-139.3, and 36-139.4 of the Code of Virginia are repealed.**
- 3. That the provisions of this act shall become effective on July 1, 2008.**