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OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005



ENROLLED

COMMITTEE SUBSTITUTE FOR House Bill No. 3328

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]



Passed April 8, 2005

In Effect from Passage

FILED

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COMMITTEE SUBSTITUTE

FOR

H. B. 3328

(BY MR. SPEAKER, MR. KISS, AND DELEGATE TRUMP)

[By Request of the Executive]

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S.M.B.
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[Passed April 8, 2005; in effect from passage.]

AN ACT to amend and reenact §15-5-1, §15-5-2, §15-5-3 and §15-5-13 of the Code of West Virginia, 1931, as amended, all relating to the Office of Emergency Services; changing the name of the Office of Emergency Services to the Division of Homeland Security and Emergency Management; transferring duties, functions, personnel and related entities; specifying qualifications of the Director; directing entities to coordinate and cooperate with the Secretary of the Department of Military Affairs and Public Safety as to the receipt of federal funds for homeland security and emergency services purposes; providing that the Governor may require certain reports from entities receiving services, equipment, supplies, materials or funds for homeland security and emergency services purposes; and requiring copies of reports to be furnished to the Legislature.

Be it enacted by the Legislature of West Virginia:

That §15-5-1, §15-5-2, §15-5-3 and §15-5-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.

§15-5-1. Policy and purpose.

1 In view of the existing and increasing possibility of the
2 occurrence of disasters of unprecedented size and destructive-
3 ness, resulting from terrorism, enemy attack, sabotage or other
4 hostile action, or from fire, flood, earthquakes or other natural
5 or man-made causes and in order to insure that preparations of
6 this state will be adequate to deal with such disasters, and
7 generally to provide for the common defense and to protect the
8 public peace, health and safety and to preserve the lives and
9 property of the people of the state, it is hereby found and
10 declared to be necessary: (1) To create the Division of Home-
11 land Security and Emergency Management and to authorize the
12 creation of local and regional organizations for emergency
13 services in the political subdivisions of the state; (2) to confer
14 upon the Governor, and upon the executive heads of governing
15 bodies of the political subdivisions of the state the emergency
16 powers provided herein; (3) to provide for the rendering of
17 mutual aid among the political subdivisions of the state and
18 with other states and to cooperate with the federal government
19 with respect to the carrying out of emergency services and
20 homeland security functions; (4) and to establish and imple-
21 ment comprehensive homeland security and emergency
22 management plans to deal with such disasters. It is further
23 declared to be the purpose of this article and the policy of the
24 state that all homeland security and emergency management
25 funds and functions of this state be coordinated to the maximum
26 extent with the Secretary of the Department of Military Affairs

27 and Public Safety and with the comparable functions of the
28 federal government including its various departments and
29 agencies, of other states and localities and of private agencies
30 of every type, so that the most effective preparation and use
31 may be made of the nation's and this state's manpower,
32 resources and facilities for dealing with any disaster that may
33 occur.

§15-5-2. Definitions.

1 As used in this article:

2 (a) "Emergency services" means the preparation for and the
3 carrying out of all emergency functions, other than functions for
4 which military forces are primarily responsible, to protect,
5 respond and recover, to prevent, detect, deter and mitigate, to
6 minimize and repair injury and damage resulting from disasters
7 or other event caused by flooding, terrorism, enemy attack,
8 sabotage or other natural or other man-made causes. These
9 functions include, without limitation, fire-fighting services,
10 police services, medical and health services, communications,
11 radiological, chemical and other special weapons defense,
12 evacuation of persons from stricken areas, emergency welfare
13 services, emergency transportation, existing or properly
14 assigned functions of plant protection, temporary restoration of
15 public utility services and other functions related to the health,
16 safety and welfare of the citizens of this state, together with all
17 other activities necessary or incidental to the preparation for
18 and carrying out of the foregoing functions. Disaster includes
19 the imminent threat of disaster as well as its occurrence and any
20 power or authority exercisable on account of a disaster that may
21 be exercised during the period when there is an imminent threat
22 thereof;

23 (b) "Local organization for emergency services" means an
24 organization created in accordance with the provisions of this

25 article by state or local authority to perform local emergency
26 services function;

27 (c) "Mobile support unit" means an organization for
28 emergency services created in accordance with the provisions
29 of this article by state or local authority to be dispatched by the
30 Governor to supplement local organizations for emergency
31 services in a stricken area;

32 (d) "Political subdivision" means any county or municipal
33 corporation in this state;

34 (e) "Board" means the West Virginia Disaster Recovery
35 Board created by this article;

36 (f) "Code" means the code of West Virginia, one thousand
37 nine hundred thirty-one, as amended;

38 (g) "Community facilities" means a specific work or
39 improvement within this state or a specific item of equipment
40 or tangible personal property owned or operated by any
41 political subdivision or nonprofit corporation and used within
42 this state to provide any essential service to the general public;

43 (h) "Disaster" means the occurrence or imminent threat of
44 widespread or severe damage, injury, or loss of life or property
45 resulting from any natural or terrorist or man-made cause,
46 including weapons of mass destruction, fire, flood, earthquake,
47 wind, snow, storm, chemical or oil spill or other water or soil
48 contamination, epidemic, air contamination, blight, drought,
49 infestation or other public calamity requiring emergency action;

50 (i) "Disaster recovery activities" means activities under-
51 taken prior to, during or following a disaster to provide, or to
52 participate in the provision of, emergency services, temporary
53 housing, residential housing, essential business activities and
54 community facilities;

55 (j) “Essential business activities” means a specific work or
56 improvement within this state or a specific item of equipment
57 or tangible personal property used within this state by any
58 person to provide any essential goods or service deemed by the
59 authority to be necessary for recovery from a disaster;

60 (k) “Person” means any individual, corporation, voluntary
61 organization or entity, partnership, firm or other association,
62 organization or entity organized or existing under the laws of
63 this or any other state or country;

64 (l) “Recovery fund” means the West Virginia Disaster
65 Recovery Trust Fund created by this article;

66 (m) “Residential housing” means a specific work or
67 improvement within this state undertaken primarily to provide
68 dwelling accommodations, including the acquisition, construc-
69 tion or rehabilitation of land, buildings and improvements
70 thereto, for residential housing, including, but not limited to,
71 facilities for temporary housing and emergency housing, and
72 such other nonhousing facilities as may be incidental or
73 appurtenant thereto; and

74 (n) “Temporary housing” means a specific work or im-
75 provement within this state undertaken primarily to provide
76 dwelling accommodations, including the acquisition, construc-
77 tion or rehabilitation of land, buildings and improvements
78 thereto, for temporary residential shelters or housing for victims
79 of a disaster and such other nonhousing facilities as may be
80 incidental or appurtenant thereto.

81 (o) “Secretary” means the Secretary of the West Virginia
82 Department of Military Affairs and Public Safety.

**§15-5-3. Division of Homeland Security and Emergency Manage-
ment created.**

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

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

24 (c) The Director may employ such technical, clerical,
25 stenographic and other personnel, fix their compensation and
26 make expenditures within the appropriation to the Division or
27 from other funds made available for the purpose of providing
28 homeland security and emergency management services to
29 carry out the purpose of this article. Employees of the Division
30 of Homeland Security and Emergency Management shall be
31 members of the State Civil Service System and all appoint-
32 ments of the office, except those required by law to be exempt,
33 shall be a part of the classified service under the Civil Service
34 System.

35 (d) The Director and other personnel of the Division of
36 Homeland Security and Emergency Management shall be
37 provided with appropriate office space, furniture, equipment,
38 supplies, stationery and printing in the same manner as pro-
39 vided for personnel of other state agencies.

40 (e) The Director, subject to the direction and control of the
41 Governor through the Secretary of the Department of Military
42 Affairs and Public Safety, shall be executive head of the
43 Division of Homeland Security and Emergency Management
44 and shall be responsible to the Governor and the Secretary of
45 the Department of Military Affairs and Public Safety for
46 carrying out the program for homeland security and emergency
47 management in this state. The Director in consultation with the
48 Secretary of the Department of Military Affairs and Public
49 Safety shall coordinate the activities of all organizations for
50 homeland security and emergency management within the state
51 and maintain liaison with and cooperate with homeland
52 security, emergency management and other emergency service
53 and civil defense agencies and organizations of other states and
54 of the federal government, and shall have additional authority,
55 duties and responsibilities authorized by this article as may be
56 prescribed by the Governor or the Secretary of the Department
57 of Military Affairs and Public Safety.

58 (f) The Director shall have the power to acquire in the name
59 of the state by purchase, lease or gift, real property and rights
60 or easements necessary or convenient to construct thereon the
61 necessary building or buildings for housing and homeland
62 security and emergency management control center.

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

1 (a) Each political subdivision shall have the power to make
2 appropriations in the manner provided by law for making

3 appropriations for the ordinary expenses of such political
4 subdivision for the payment of expenses of its local organiza-
5 tion for emergency services or of its proportionate share of
6 expenses of a regional organization for emergency services, or
7 both.

8 (b) Whenever the federal government or any agency or
9 officer thereof shall offer to any authority, corporation, partner-
10 ship or other entity, public or private or the state, or through the
11 state to any political subdivision thereof, services, equipment,
12 supplies, materials or funds by way of gift, grant or loan, for
13 purposes relating to homeland security or emergency services,
14 the state, after consultation and in coordination with the
15 Secretary and acting through the Governor, or a political
16 subdivision after consultation and in coordination with the
17 Secretary and acting with the consent of the Governor and
18 through its executive officer or governing body, may accept the
19 offer. Upon acceptance, the Governor of the state or executive
20 officer or governing body of the political subdivision may
21 authorize any officer of the state or of the political subdivision,
22 as the case may be, to receive services, equipment, supplies,
23 materials or funds on behalf of the state or the political subdivi-
24 sion and subject to the terms of the offer and the rules and
25 regulations, if any, of the agency making the offer.

26 (c) Whenever any person, firm or corporation shall offer to
27 the state or to any political subdivision thereof, services,
28 equipment, supplies, materials or funds by way of gift, grant or
29 loan, for purposes relating to homeland security or emergency
30 services, the state, after consultation and in coordination with
31 the Secretary and acting through the Governor, or the political
32 subdivision after consultation and in coordination with the
33 Secretary and acting through its executive officer or governing
34 body, may accept the offer. Upon acceptance, the Governor of
35 the state or executive officer or governing body of the political
36 subdivision may authorize any officer of the state or of the

37 political subdivision, as the case may be, to receive services,
38 equipment, supplies, materials or funds on behalf of the state or
39 the political subdivision and subject to the terms of the offer.

40 (e) The Governor may require any agency, authority,
41 corporation, partnership or other entity to furnish a report, in
42 both written and electronic form, detailing the source and
43 receipt of all services, equipment, supplies, materials or funds
44 for purposes relating to homeland security or emergency
45 services as a condition of receiving these from the state. Within
46 ten days of the receipt of any reports required under this
47 subsection, the Governor shall furnish copies thereof to the
48 Legislature.

A handwritten signature in black ink, appearing to be "D. H. ...", located at the bottom of the page.

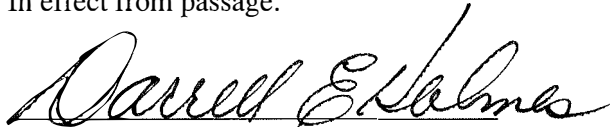
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee

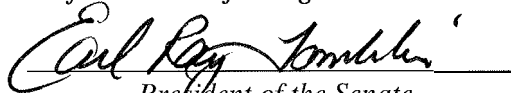

Chairman House Committee

Originating in the House.

In effect from passage.

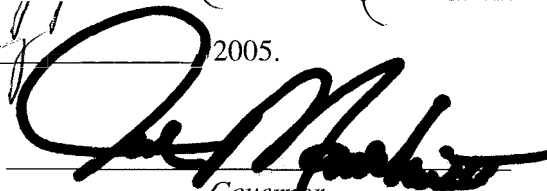

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 31
day of May 2005.


Governor

PRESENTED TO THE
GOVERNOR

MAY 2 2005

Time 4:15 pm