

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 613

INTERIM
BILL

BY SENATOR SWOPE

[Introduced January 24, 2020; referred
to the Committee on Government Organization]

1 A BILL to repeal §15-5-4 and §15-5-27 of the Code of West Virginia, 1931, as amended; to
2 amend and reenact §5F-2-2 of said code; to amend and reenact §15-1A-3 of said code;
3 to amend and reenact §15-5-4b, §15-5-4c, §15-5-13, §15-5-24, and §15-5-26 of said
4 code; to amend said code by adding thereto a new section, designated §15-5-29; to
5 amend and reenact §19-1-4 of said code; to amend and reenact §19-21A-4 of said code;
6 to amend and reenact §20-1-7 of said code; to amend and reenact §22-1-6 of said code;
7 to amend and reenact §29-31-2, §29-31-3, and §29-31-4 of said code; to amend said
8 code by adding thereto a new section, designated §29-31-5; and to amend and reenact
9 §33-2-23 of said code, all relating to the State Resiliency Office and State Resiliency
10 Officer; authorizing department heads to work with the State Resiliency Office; requiring
11 Adjutant General to cooperate with the State Resiliency Office; eliminating the West
12 Virginia Disaster Recovery Board; requiring the State Resiliency Officer's approval to
13 Auditor for disbursements from WV Disaster Recovery Fund; establishing powers of
14 State Resiliency Office with respect to fund; providing authority of State Resiliency Office
15 to accept assistance of the federal government related to emergency response;
16 establishing the State Resiliency Officer as the administrator of the Disaster Recovery
17 Trust Fund; providing authority of State Resiliency Office to disburse funds; eliminating
18 annual reporting requirement of fund; requiring Director of Division of Homeland Security
19 and Emergency Management to cooperate with the State Resiliency Office; requiring the
20 Agriculture Commissioner to cooperate with the State Resiliency Office; requiring the
21 State Conservation Commission to cooperate with the State Resiliency Office;
22 authorizing the Secretary of the Department of Environmental Protection to cooperate
23 with the State Resiliency Office; designating the State Resiliency Office as the authority
24 to provide and coordinate emergency relief efforts; establishing the State Resiliency
25 Office as within the Office of the Governor; modifying requirements for board members;
26 establishing additional duties for the board; providing for the appointment, duties, and

27 requirements for the position of State Resiliency Officer; providing that the State
 28 Resiliency Officer will act on behalf of the Governor in emergency situations;
 29 establishing the authority of the State Resiliency Office and State Resiliency Officer;
 30 establishing the State Resiliency Officer to report to the Joint Committee on Flooding;
 31 establishing the power of the State Resiliency Officer over employees of the office;
 32 creating and establishing state office of National Flood Control Program; and providing
 33 for a coordinator to administer the program.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF
 STATE GOVERNMENT.**

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§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
 2 each 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
 5 and 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 section seven of this article;

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
18 not expended due to cost savings resulting from the implementation of the provisions of this
19 chapter: *Provided*, That no more than 25 percent of the funds appropriated to any one agency
20 or board may be transferred to other agencies or boards within the department: *Provided*,
21 *however*, That no funds may be transferred from a special revenue account, dedicated account,
22 capital expenditure account or any other account or funds specifically exempted by the
23 Legislature from transfer, except that the use of appropriations from the state Road Fund
24 transferred to the office of the Secretary of the Department of Transportation is not a use other
25 than the purpose for which the funds were dedicated and is permitted: *Provided further*, That if
26 the Legislature by subsequent enactment consolidates agencies, boards or functions, the
27 appropriate secretary may transfer the funds formerly appropriated to the agency, board or
28 function in order to implement consolidation. The authority to transfer funds under this section
29 shall expire on June 30, 2010;

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

37 (9) Acquire by lease or purchase property of whatever kind or character and convey or
38 dispose of any property of whatever kind or character as authorized by law: *Provided*, That the
39 powers granted to the secretary to lease, purchase, convey or dispose of such property shall be

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

46 (10) Conduct internal audits;

47 (11) Supervise internal management;

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

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

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

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

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

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

65 (2) The elimination, reduction and restriction of state government publications, including

66 annual reports, informational materials and promotional materials;

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

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

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

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

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

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

90 (e) Notwithstanding any other provision of this code to the contrary, the secretary of
91 each department with authority over programs which have an impact on the delivery of health

92 care services in the state or are payors for health care services or are payors for prescription
93 drugs, including, but not limited to, the Public Employees Insurance Agency, the Department of
94 Health and Human Resources, the Bureau of Senior Services, the Children's Health Insurance
95 Program, the Health Care Authority, the Office of the Insurance Commissioner, the Division of
96 Corrections, the Division of Juvenile Services, the Regional Jail and Correctional Facility
97 Authority, state colleges and universities, public hospitals, state or local institutions including
98 nursing homes and veterans' homes, the Division of Rehabilitation Services, public health
99 departments, the Bureau for Medical Services and other programs, which have an impact on the
100 delivery of health care services or are payors for health care services or are payors for
101 prescription drugs, in West Virginia shall cooperate with the Governor's Office of Health
102 Enhancement and Lifestyle Planning established pursuant to §16-29h-1 *et seq.* for the purpose
103 of improving the health care delivery services in West Virginia for any program over which they
104 have authority.

105 (f) Notwithstanding any other provision of this code to the contrary, the secretary of each
106 department shall cooperate with the State Resiliency Office to the fullest extent practicable to
107 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
3 forces of the state in carrying out their state mission, establish unified command of state forces
4 whenever jointly engaged, coordinate the military affairs with the civil defense of the state and
5 organize and coordinate the activities of all civil agencies including local and state police in
6 event of declaration of a limited emergency by the Governor pursuant to article one-d of this

7 chapter. In time of emergency or disaster, the Adjutant General shall coordinate his or her
8 activities with those of the Office of Emergency Services provided for by article five of this
9 chapter. He or she shall be custodian of all military records of the State and shall keep the same
10 indexed and available for ready reference. He or she shall keep an itemized account of all
11 moneys received and dispensed from all sources and shall make an annual report to the
12 Governor on the condition of the organized militia, receipts and expenditures and such other
13 matters relating to the military forces of the State and the Adjutant General's department as he
14 or she shall deem expedient.

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

27 (c) The Adjutant General shall keep records of all service personnel from the state of
28 West Virginia, commissioned or enlisted, in any of the wars of the United States and of
29 individual claims of citizens of West Virginia for service rendered in such wars. He or she shall
30 assist all persons residing in this state having claims against the United States for pension,
31 bounty or back pay or such claims as have arisen out of, or by reason of, service in any of said
32 wars. To this end he or she shall cooperate with the agents or attorneys of such claimants,

33 furnish to claimants only all necessary certificates or certified abstracts from, or copies of,
 34 records or documents in his or her office and shall seek in all practicable ways to secure speedy
 35 and just action in all claims now pending or which may hereafter be filed: *Provided*, That any
 36 and all of the above services shall be rendered without charge to the claimant. He or she shall
 37 establish and maintain as a part of his or her office a bureau of records of the services of the
 38 West Virginia troops during such wars and shall keep arranged in proper and convenient form
 39 all records and papers pertaining thereto.

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

ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT

**§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 ~~board to disburse funds from 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 board~~ the State Resiliency Officer, shall have
 3 the power ~~upon its own determination that a disaster has occurred or is about to occur in this~~
 4 ~~state~~ to disburse funds from the disaster relief recovery trust fund created pursuant to §15-5-24
 5 of this code to any person, political subdivision, or local organization for emergency services in
 6 such amounts and in such manner, and to take such other actions, as the ~~board~~ State
 7 Resiliency Officer may determine is necessary or appropriate in order to provide assistance to
 8 any person, political subdivision, or local organization for emergency services responding to or
 9 recovering from the disaster, or otherwise involved in disaster recovery activities: *Provided*, That

10 except as provided hereafter in this section, requisitions for payment shall not be made or
 11 authorized for payment by the Auditor without the express approval of the State Resiliency
 12 Officer, except that the State Resiliency Officer’s approval shall be deemed to be made for the
 13 initial disbursement to cover the first 30 days of disaster response, and: *Provided, however,*
 14 That all subsequent disbursements arising out of the events surrounding the state of emergency
 15 or preparedness giving rise to the relevant disbursements shall require the express approval of
 16 the State Resiliency Officer, which approval shall not be unduly withheld or delayed.

§15-5-4c. Powers and duties of related to the West Virginia Disaster Recovery ~~board~~

Trust

Fund.

1 The ~~board~~ 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 ~~article~~ code. The ~~authority~~ State Resiliency Officer has the power:

4 (1) To accept appropriations, gifts, grants, bequests, and devises from any source,
 5 public 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
 9 or 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
19 amounts, 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 ~~board~~ Division of Homeland Security and Emergency Management from
36 the recovery fund;

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

43 (14) To make or participate in the making of insured or uninsured construction and

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

50 (15) Do all acts necessary and proper to carry out the powers granted to the ~~board~~ State
51 Resiliency Office. ~~under this article~~

§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
4 proportionate 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
8 way of gift, grant or loan, for purposes relating to homeland security or emergency services, the
9 State, after consultation and in coordination with the ~~Secretary~~ State Resiliency Officer and
10 acting through the Governor, or a political subdivision after consultation and in coordination with
11 the ~~Secretary~~ State Resiliency Officer and acting with the consent of the Governor and through
12 its executive officer or governing body, may accept the offer. Upon acceptance, the Governor of
13 the state or executive officer or governing body of the political subdivision may authorize any
14 officer of the State or of the political subdivision, as the case may be, to receive services,
15 equipment, supplies, materials or funds on behalf of the state or the political subdivision and
16 subject to the terms of the offer and the rules and regulations, if any, of the agency making the
17 offer.

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

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

§15-5-24. Disaster Recovery Trust Fund; use disbursement of funds of ~~authority~~.

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

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

§15-5-26. Tax exemption.

1 The ~~board~~ State Resiliency Officer shall not be required to pay any taxes and
 2 assessments to the state or any political subdivision of the state upon any of its moneys,
 3 properties, or assets or upon its obligations or other evidences of indebtedness pursuant to the
 4 provisions of this article, or upon any moneys, funds, revenues, or other income held or
 5 received ~~by~~ into the West Virginia disaster recovery ~~board~~ 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
 2 Division of Homeland Security and Emergency Management shall cooperate with the State
 3 Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties.

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
14 dissemination of information relative to the soil, climate, health, natural resources, market
15 opportunities and 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
26 kindred 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; and

39 (k) Cooperate with the State Resiliency Office to the fullest extent practicable to assist
 40 that office in fulfilling its duties; and

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

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
17 America 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
19 shall be judicially noticed, and may perform those acts, hold public hearings, and adopt or
20 propose for legislative approval rules necessary for the execution of its functions under this
21 article.

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

34 institution of learning and make special reports, surveys or studies required by the committee.

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

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

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

46 (3) Provide for an annual audit of the accounts of receipts and disbursements.

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

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;
78 maintain, administer, operate and improve any properties acquired; receive and retain income
79 from the property and to expend the income as required for operation, maintenance,
80 administration or improvement of the properties or in otherwise carrying out the purposes and
81 provisions of this article; and sell, lease or otherwise dispose of any of its property or interests in
82 the property in furtherance of the purposes and the provisions of this article. Money received
83 from the sale of land acquired in the small watershed program shall be deposited in the special
84 account of the State Conservation Committee and expended as provided in this article.

85 (11) To promulgate emergency and legislative rules to effectuate the provisions of this

86 article as amended and reenacted by the Legislature during the 2018 regular session of the
87 Legislature.

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
90 the purpose of removing debris and other obstruction which impede water flow and present
91 additional flood hazards. The agency shall make reasonable efforts to secure the permission of
92 the landowner before entering any private property in connection with these removal activities.
93 The exercise of this limited authority does not constitute taking of private property or trespass.
94 This authority shall continue for the duration of the Governor's proclamation or the federal
95 disaster declaration.

96 (13) Cooperate with the State Resiliency Office to the fullest extent practicable to assist
97 that office in fulfilling its duties.

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

11 organizations in furtherance of providing a comprehensive program for the exploration,
12 conservation, development, protection, enjoyment and use of the natural resources of the state
13 are exempt from the provisions of §5A-3-1 *et seq.* of this code: *Provided, however,* That repair,
14 renovation and rehabilitation of existing facilities, buildings, amenities and infrastructure
15 necessary to protect public health or safety or to provide uninterrupted enjoyment and public
16 use of state parks, state forests, wildlife management areas and state natural areas under the
17 jurisdiction of the Division of Natural Resources are exempt from the provisions of §5A-3-1 *et*
18 *seq.* of this code. Nothing in this section authorizes new construction of buildings and new
19 construction of recreational facilities as defined in §20-5-4 of this code without complying with
20 the provisions of §5A-3-1 *et seq.* of this 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
24 purposes of control and protection, to classify by regulation the various species into such
25 categories as may be established as necessary;

26 (5) Prescribe the locality in which the manner and method by which the various species
27 of 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
30 proper for the purpose of giving interested persons in the various sections of the state an
31 opportunity to be heard concerning open season for their respective areas, and report the
32 results of the meetings to the Natural Resources Commission before the season and bag limits
33 are fixed by it;

34 (7) Suspend open hunting season upon any or all wildlife in any or all counties of the
35 state with the prior approval of the Governor in case of an emergency such as a drought, forest
36 fire hazard or epizootic disease among wildlife. The suspension shall continue during the

37 existence of the emergency and until rescinded by the director. Suspension, or reopening after
38 such suspension, of open seasons may be made upon 24 hours' notice by delivery of a copy of
39 the order of suspension or reopening to the wire press agencies at the state capitol;

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

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

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

46 (11) Acquire for the state in the name of the Division of Natural Resources by purchase,
47 condemnation, lease or agreement, or accept or reject for the state, in the name of the Division
48 of Natural Resources, gifts, donations, contributions, bequests or devises of money, security or
49 property, both real and personal, and any interest in such property, including lands and waters,
50 which he or she deems suitable for the following purposes:

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

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

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

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

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

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

63 chapter;

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

66 (13) Sell timber for not less than the value thereof, as appraised by a qualified appraiser
67 appointed by the director, from all lands under the jurisdiction and control of the director, except
68 those lands that are designated as state parks and those in the Kanawha State Forest. The
69 appraisal shall be made within a reasonable time prior to any sale, reduced to writing, filed in
70 the office of the director and shall be available for public inspection. The director must obtain the
71 written permission of the Governor to sell timber when the appraised value is more than \$5,000.
72 The director shall receive sealed bids therefor, after notice by publication as a Class II legal
73 advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code and the
74 publication area for the publication shall be each county in which the timber is located. The
75 timber so advertised shall be sold at not less than the appraised value to the highest
76 responsible bidder, who shall give bond for the proper performance of the sales contract as the
77 director shall designate; but the director may reject any and all bids and re-advertise for bids. If
78 the foregoing provisions of this section have been complied with and no bid equal to or in
79 excess of the appraised value of the timber is received, the director may, at any time, during a
80 period of six months after the opening of the bids, sell the timber in such manner as he or she
81 deems appropriate, but the sale price may not be less than the appraised value of the timber
82 advertised. No contract for sale of timber made pursuant to this section may extend for a period
83 of more than 10 years. And all contracts heretofore entered into by the state for the sale of
84 timber may not be validated by this section if a contract is otherwise invalid. The proceeds
85 arising from the sale of the timber so sold shall be paid to the Treasurer of the State of West
86 Virginia and shall be credited to the division and used exclusively for the purposes of this
87 chapter: *Provided*, That nothing contained herein may prohibit the sale of timber which
88 otherwise would be removed from ~~right-of-way's~~ rights-of-way necessary for and strictly

89 incidental to the extraction of minerals;

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

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

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

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

113 (18) Keep a complete and accurate record of all proceedings, record and file all bonds
114 and contracts taken or entered into and assume responsibility for the custody and preservation

115 of all papers and documents pertaining to his or her office, except as otherwise provided by law;

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

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

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

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

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

129 (A) The director shall convene, prior to October 1, 2019, two public hearings:

130 (i) An initial public hearing shall be for the purpose of seeking public input regarding
131 options for the construction of a lodge and a conference center, including all available public,
132 private or public-private partnership (PPP) funding and financing options; and

133 (ii) A subsequent public hearing at which the feasibility study and any recommendation
134 shall be available for public comment;

135 (B) The public hearings required by this subdivision must be held in a suitable location
136 reasonably close to Beech Fork State Park so as to accommodate public participation from the
137 citizens of Cabell, Lincoln, and Wayne counties; and

138 (C) Upon completion of the feasibility study it shall be submitted by the director to the
139 Joint Committee on Government and Finance on or before December 1, 2019;

140 (24) Accept and expend, without the necessity of appropriation by the Legislature, any

141 gift or grant of money made to the division for all purposes specified in this chapter and he or
142 she shall account for and report on all such receipts and expenditures to the Governor;

143 (25) Cooperate with the state historian and other appropriate state agencies in
144 conducting research with reference to the establishment of state parks and monuments of
145 historic, scenic and recreational value and to take such steps as may be necessary in
146 establishing the monuments or parks as he or she deems advisable;

147 (26) Maintain in his or her office at all times, properly indexed by subject matter and also
148 in chronological sequence, all rules made or issued under the authority of this chapter. The
149 records shall be available for public inspection on all business days during the business hours of
150 working days;

151 (27) Delegate the powers and duties of his or her office, except the power to execute
152 contracts not related to land and stream management, to appointees and employees of the
153 division, who shall act under the direction and supervision of the director and for whose acts he
154 or she shall be responsible;

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

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

162 (30) Establishing procedures and fee schedule for individuals applying for limited permit
163 hunts; and

164 (31) Cooperate with the State Resiliency Office to the fullest extent practicable to assist
165 that office in fulfilling its duties; and

166 ~~(34)~~ (32) Promulgate rules, in accordance with the provisions of §29A-1-1 *et seq.* of this

167 code, to implement and make effective the powers and duties vested in him or her by the
168 provisions of this chapter and take such other steps as may be necessary in his or her
169 discretion for the proper and effective enforcement of the provisions of this chapter.

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

9 (b) The secretary has the power to and may designate supervisory officers or other
10 officers 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,
14 to supervisory officers or other officers or employees of the department his or her powers,
15 duties, authority and responsibility relating to issuing permits, hiring and training inspectors and
16 other 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
27 and 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
32 agencies, subdivisions of the state, corporations, associations, partnerships or individuals:
33 *Provided*, That the powers granted to the secretary to enter into agreements or contracts and to
34 make 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
37 that comprise and are incorporated into each secretary's department pursuant to the provisions
38 of chapter five-f 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
44 for the purposes of this chapter include consent agreements; and to otherwise enforce the
45 statutes 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
55 Federal 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
58 the Department of Environmental Protection, gifts, donations, contributions, bequests or devises
59 of 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
63 specialized instruction of any employee. Approved educational programs, training and
64 instruction time may be compensated for as a part of regular employment. The secretary is
65 authorized to pay out of federal or state funds, or both, as such funds are available, fees and
66 expenses incidental to the educational programs, training and instruction. Eligibility for
67 participation by employees shall be 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
69 and enter into agreements in accordance with the provisions of section seven-a, article eleven
70 of this chapter. Prior to issuing any certification the secretary shall solicit from the Division of
71 Natural Resources reports and comments concerning the possible certification. The Division of

72 Natural Resources shall direct the reports and comments to the secretary for consideration; ~~and~~

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
77 call 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
79 that office in fulfilling its duties.

80 (e) The secretary shall be appointed by the Governor, by and with the advice and
81 consent 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
83 old and shall be selected with special reference and consideration given to his or her
84 administrative experience and ability, to his or her demonstrated interest in the effective and
85 responsible regulation of the energy industry and the conservation and wise use of natural
86 resources. The secretary must have at least a bachelor's degree in a related field and at least
87 three years of experience in a position of responsible charge in at least one discipline relating to
88 the duties and responsibilities for which the secretary will be responsible upon assumption of
89 the office. The secretary may not be a candidate for or hold any other public office, may not be a
90 member of any political party committee and shall immediately forfeit and vacate his or her
91 office as secretary in the event he or she becomes a candidate for or accepts appointment to
92 any other public office or 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
95 official duties. Prior to the assumption of the duties of his or her office, the secretary shall take
96 and 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
99 Secretary of State. Premiums on the bond shall be paid from the department funds.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

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
4 the impact of future disasters, respond quickly to save lives, protect property and the
5 environment, meet basic human needs, and provide economic growth and resilience in the
6 aftermath of an incident. Therefore, the ~~The State Resiliency Office~~ is hereby created. The office
7 shall be organized within the ~~Development Office in the Department of Commerce~~ Office of the
8 Governor. The Office will serve as the recipient of disaster recovery and resiliency funds,
9 excluding federal Stafford Act funds, and the coordinating agency of recovery and resiliency
10 efforts, including matching funds for other disaster recovery programs, excluding those funds
11 and efforts under the direct control of the State Resiliency Officer pursuant to §15-5-4b and §15-
12 5-24 of this code for a particular event.

13 (b) (1) The State Resiliency Office Board is also established and shall consist of the
14 following ~~eight~~ members: the Commissioner of Agriculture or his or her designee; the Secretary
15 of the Department of Commerce or his or her designee; the Director of the Division of Natural
16 Resources or his or her designee; the Secretary of the Department of Environmental Protection
17 or his or her designee; the Executive Director of the State Conservation Agency or his or her
18 designee; the President of the West Virginia Emergency Management Council or his or her
19 designee; the Secretary of the Department of Military Affairs and Public Safety or his or her
20 designee; the Secretary of Transportation or his or her designee; the Adjutant General of the

21 West Virginia National Guard or his or her designee; ~~and the Director of the Division of~~
22 ~~Homeland Security and Emergency Management within the Department of Military Affairs and~~
23 ~~Public Safety~~ or his or her designee; two members of the West Virginia Senate, to be appointed
24 by the President of the Senate; and two members of the West Virginia House of Delegates, to
25 be appointed by the Speaker of the House of Delegates.

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

32 (3) The Board shall:

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

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

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

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

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

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

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

46 (A) Have at least five years managerial or strategic planning experience in matters

47 relating to flood control and hazard mitigation or, alternatively in disaster recovery, emergency
48 management, or emergency response; and

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

52 (4) The State Resiliency Officer shall employ a deputy who shall assist the State
53 Resiliency Officer in carrying out the duties of the office; this deputy shall be selected by the
54 State Resiliency Officer and an appointment as deputy shall require a two-thirds vote of the of
55 the State Resiliency Office Board. Applicants for the deputy position shall at a minimum:

56 A) Have at least five years managerial or strategic planning experience in matters
57 relating to flood control and hazard mitigation or, alternatively in disaster recovery, emergency
58 management, or emergency response; and

59 (B) Be thoroughly knowledgeable in matters relating to flood control and hazard
60 mitigation, or alternatively, in matters relating to disaster recovery, emergency management,
61 and emergency response; and

62 (C) If the State Resiliency Officer has his or her primary experience in flood control and
63 hazard mitigation then his or her deputy must have experience in disaster recovery, emergency
64 management, or emergency response; alternatively, if the State Resiliency Officer has his or her
65 primary experience in disaster recovery, emergency management, or emergency response then
66 his or her deputy must have experience in flood control and hazard mitigation.

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

72 The Board will assist and advise the State Resiliency Officer in developing policies to

73 accomplish, at a minimum, the following specific tasks in order to achieve these goals, and will
74 assist the State Resiliency Officer in devising plans and developing procedures which will
75 ensure that agencies and political subdivisions of the State carry out these following specific
76 tasks:

77 (1) Establishing mechanisms to coordinate resiliency related programs and activities
78 among state agencies and to encourage intergovernmental as well as cross-sector coordination
79 and collaboration;

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

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

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

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

89 (6) Identify, prioritize and evaluate issues affecting implementation of mitigation and
90 adaptation actions, including but limited to, the effect of loss of land in context of zoning and
91 other land use regulations, possible conflicts between public hazard mitigation/adaptation
92 planning and private property interests (e.g. buy-out programs, projects to increase flood
93 storage), develop guidance for cities and towns, real estate professionals, property owners
94 under existing law and regulations; and develop proposals for changes in laws, policies and
95 regulations, as needed;

96 (7) Ensure all counties and municipalities have up to date Hazard Mitigation Plans and
97 Local Comprehensive Disaster Plans that are consistent with and coordinated to the state's
98 Hazard Mitigation Plans and Comprehensive Disaster Plans; including, but not limited to,

99 assisting them in developing planning guidance for cities and towns to complete and/or update
100 Hazard Mitigation Plans; providing technical assistance to help counties and municipalities meet
101 these standards; and provide notice to counties and municipalities of funding opportunities to
102 implement projects outlined in their Hazard Mitigation Plans;

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

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

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

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

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

121 ~~(d)~~ (e) The chair State Resiliency Office shall provide adequate staff from their
122 respective that office, to ensure the meetings of the board are properly noticed, meetings of the
123 board are facilitated, board meeting minutes are taken, records and correspondence kept and
124 that reports of the board are produced in a timely manner.

§29-31-3. Authority of State Resiliency Office; ~~authority of board~~ and State Resiliency Officer.

1 The State Resiliency Office, ~~through its board may~~ will coordinate the state's disaster
2 response mission and the State Resiliency Officer serve as the primary representative of the
3 Governor. The State Resiliency Officer will act on behalf of the Governor in the event of the
4 proclamation of the existence of a state of emergency or state of preparedness under the
5 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
8 article. 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
11 the state;

12 (2) ~~Annually~~ Coordinate an annual review of the state flood protection plan and update
13 the plan no 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 ~~or~~ other useful and desirable
18 resiliency 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
31 occur;

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

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

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

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

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

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

50 (20) Hire necessary employees at an appropriate salary equivalent to a competitive

51 wage rate:

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

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

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

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

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

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

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

70 The office shall have any other additional authority, duties, and responsibilities as
71 prescribed by the Governor to effectuate the purposes of this article. Due to the at-will
72 employment relationship with the office, its employees may not avail themselves of the state
73 grievance procedure as set forth in §29-6a-1 *et seq.* of this code.

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

1 ~~(a) The chair of the board of the State Resiliency Office~~ Officer shall report, at a
2 minimum of quarterly, to the Joint Legislative Committee on Flooding, created pursuant to §4-

3 15-1 *et seq.* of this code, in sufficient detail for the committee to be aware of the activities of the
 4 ~~board~~ office to assure progress toward reducing and mitigating flood damage within this state
 5 while respecting and complying with the Takings Clause of the United States Constitution, the
 6 West Virginia Constitution, and related precedential court opinions, and to develop legislative
 7 recommendations and -

8 ~~(b) The chair of the council~~ shall submit an annual report to the committee by December
 9 31 of each year, along with any recommended legislation, budget requests and a summary of
 10 the activities of the Office ~~board~~ 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 on 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
 8 or released from his or her respective position without cause or reason.

9 (4) Employees will 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
 13 funds or property shall execute of surety bonds.

14 (b) The State Resiliency Officer will set appropriate salary rates for employees
 15 equivalent 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, instructions as necessary to effectively administer
8 the program. The coordinator shall conduct trainings and will adopt and enforce adequate land
9 use and development criteria that are consistent with the minimum standards established by the
10 National Flood Insurance Program and shall report to the Insurance Commissioner.

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

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

NOTE: The purpose of this bill is to establish of the State Resiliency Office and State

Resiliency Officer.

This bill has been recommended for passage by the Joint Legislative Committee on Flooding.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.