

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2003

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TONEY, BRUCE, KIMES, ELLINGTON, RILEY, D. JEFFRIES,
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[Introduced February 10, 2021; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §15-5-2 and §15-5-6 of the Code of West Virginia, 1931, as
2 amended, all relating to the authority and obligations of the Governor and Legislature
3 when in declared states of preparedness and emergency; clarifying the authority and
4 obligations of the Governor during periods of preparedness and emergency; providing
5 requirements for any proclamation or resolution issued relating to a state of preparedness
6 or emergency; defining terms; specifying new criteria for the duration and termination of
7 states of preparedness and emergency; providing directives for lawsuits filed challenging
8 actions taken pursuant to the authority granted herein; and updating references to a state
9 agency.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY
MANAGEMENT.**

§15-5-2. Definitions.

1 As used in this article:

2 “Board” means the West Virginia Disaster Recovery Board created by this article;

3 “Code” means the Code of West Virginia, 1931, as amended;

4 “Community facilities” means a specific work, or improvement within this state or a specific
5 item of equipment or tangible personal property owned or operated by any political subdivision or
6 nonprofit corporation and used within this state to provide any essential service to the general
7 public;

8 “Disaster” means the occurrence or imminent threat of widespread or severe damage,
9 injury, or loss of life or property resulting from any natural or terrorist or man-made cause,
10 including weapons of mass destruction, fire, flood, earthquake, wind, snow, storm, chemical or oil
11 spill or other water or soil contamination, epidemic, air contamination, blight, drought, infestation
12 or other public calamity requiring emergency action;

13 “Disaster recovery activities” means activities undertaken prior to, during or following a
14 disaster to provide, or to participate in the provision of, emergency services, temporary housing,
15 residential housing, essential business activities, and community facilities;

16 “Emergency services” means the preparation for and the carrying out of all emergency
17 functions, other than functions for which military forces are primarily responsible, to protect,
18 respond, and recover, to prevent, detect, deter, and mitigate, to minimize and repair injury and
19 damage resulting from disasters or other event caused by flooding, terrorism, enemy attack,
20 sabotage, or other natural or other man-made causes. These functions include, without limitation,
21 firefighting services, police services, medical and health services, communications, emergency
22 telecommunications, radiological, chemical, and other special weapons defense, evacuation of
23 persons from stricken areas, emergency welfare services, emergency transportation, existing or
24 properly assigned functions of plant protection, temporary restoration of public utility services and
25 other functions related to the health, safety, and welfare of the citizens of this state, together with
26 all other activities necessary or incidental to the preparation for and carrying out of these functions.
27 Disaster includes the imminent threat of disaster as well as its occurrence and any power or
28 authority exercisable on account of a disaster that may be exercised during the period when there
29 is an imminent threat;

30 “Essential business activities” means a specific work or improvement within this state or a
31 specific item of equipment or tangible personal property used within this state by any person to
32 provide any essential goods or service determined by the authority to be necessary for recovery
33 from a disaster;

34 “Local organization for emergency services” means an organization created in accordance
35 with the provisions of this article by state or local authority to perform local emergency services
36 function;

37 “Mobile support unit” means an organization for emergency services created in
38 accordance with the provisions of this article by state or local authority to be dispatched by the

39 Governor to supplement local organizations for emergency services in a stricken area;

40 “Person” means any individual, corporation, voluntary organization or entity, partnership,
41 firm, or other association, organization, or entity organized or existing under the laws of this or
42 any other state or country;

43 “Political subdivision” means any county or municipal corporation in this state;

44 “Recovery fund” means the West Virginia Disaster Recovery Trust Fund created by this
45 article;

46 “Residential housing” means a specific work or improvement within this state undertaken
47 primarily to provide dwelling accommodations, including the acquisition, construction or
48 rehabilitation of land, buildings and improvements thereto, for residential housing, including, but
49 not limited to, facilities for temporary housing and emergency housing, and any other nonhousing
50 facilities that are incidental or appurtenant thereto;

51 “Secretary” means the Secretary of the West Virginia Department of ~~Military Affairs and~~
52 ~~Public Safety~~ Homeland Security; and

53 “State of emergency” means the duly proclaimed existence of, or the imminent existence
54 of, conditions of disaster, or, of a serious threat to the safety of persons and property within West
55 Virginia, such as an attack upon the state or the United States, a natural or man-made disaster
56 of major proportions, or a large-scale threat beyond the capacity of local control.

57 “State of preparedness” means specialized planning and preparation activities intended
58 to minimize any anticipated impact of a pending emergency initiated for the purpose of preserving
59 and securing people or property from harm by utilization of any available governmental resources:

60 Provided, That a state of preparedness may not be used to suspend or limit any government
61 function or service to the public, including, but not limited to, closing public schools or
62 governmental offices, nor to regulate or restrict any private state citizen’s conduct, such as
63 requiring evacuation of areas of the state or other like action, unless otherwise authorized by law;

64 and

65 “Temporary housing” means a specific work or improvement within this state undertaken
66 primarily to provide dwelling accommodations, including the acquisition, construction or
67 rehabilitation of land, buildings and improvements thereto, for temporary residential shelters or
68 housing for victims of a disaster and such other nonhousing facilities that are incidental or
69 appurtenant thereto.

§15-5-6. Emergency powers of Governor.

1 (a) The provisions of this section, and of any executive order issued pursuant to the
2 provisions of this section, are operative only during the existence of a state of emergency or state
3 of preparedness. Nothing in this section may be construed to suspend or supersede any provision
4 of the Constitution.

5 (1) The existence of a state of emergency or state of preparedness may be proclaimed by
6 the Governor or by concurrent resolution of the Legislature if the Governor in the proclamation,
7 or the Legislature in the resolution, finds that an attack upon the state or the United States has
8 occurred or is ~~anticipated in the immediate future~~ imminent, or that a natural or man-made disaster
9 of major proportions has actually occurred or is imminent within the state, or that an emergency
10 exists or may be imminent due to a large-scale threat beyond local control, and that the safety
11 and welfare of the inhabitants of this state require an invocation of the provisions of this section.

12 (2) The existence of a state of preparedness may be proclaimed by the Governor or by
13 concurrent resolution of the Legislature, if the Governor in the proclamation or the Legislature in
14 the resolution, finds that an attack upon the state or the United States is anticipated in the
15 immediate future, or that a natural or man-made disaster of major proportions is likely within the
16 state or some portion thereof, or that an emergency may be likely due to a large-scale threat
17 beyond local control, or that a major event necessitating cooperation between state and local
18 authorities, or the federal government, is imminent, and that the safety and welfare of the
19 inhabitants of this state require an invocation of the provisions of this section.

20 (b) (1) Any state of emergency ~~or state of preparedness~~, whether proclaimed by the

21 Governor or by the Legislature, terminates upon the proclamation of the termination by the
22 Governor, or the passage by the Legislature of a concurrent resolution terminating the state of
23 emergency ~~or state of preparedness~~: *Provided*, That in no case shall a state of preparedness last
24 longer than ~~thirty~~ 60 days, unless the Legislature, by passage of a concurrent resolution, extends
25 the time period of the state of emergency. The Legislature may also condition, limit, terminate, or
26 expand any action or directive made either by the proclamation of the Governor relating to the
27 state of emergency or any executive order issued as a result of such proclamation. Upon
28 proclamation by the Governor of a state of emergency, the Governor may call the Legislature into
29 special session.

30 (2) Any state of preparedness, whether proclaimed by the Governor or by the Legislature,
31 terminates upon the proclamation of the termination by the Governor, or the passage by the
32 Legislature of a concurrent resolution terminating the state of preparedness: *Provided*, That in no
33 case shall a state of preparedness last longer than 30 days, unless the Legislature by passage of
34 a concurrent resolution, extends the time period of the state of preparedness. The Legislature
35 may also condition, limit, terminate, or expand any action or directive made either by the
36 proclamation of the Governor relating to the state of preparedness or any executive order issued
37 as a result of such proclamation. Upon proclamation by the Governor of a state of preparedness,
38 the Governor may call the Legislature into special session.

39 (c) For the purposes of calculation of the length of time of the existence of a state of
40 preparedness or state of emergency commenced according to the provisions of this section, when
41 the governor issues a proclamation declaring a state of preparedness or emergency, any
42 subsequent proclamation that substantially relates to the same circumstances that caused the
43 issuance of the initial proclamation shall be treated as a continuation of the initial proclamation for
44 that purpose, even if the prior proclamation, has, by its own terms, expired: *Provided*, That when
45 a state of emergency follows a state of preparedness, and they are substantially relating to the
46 same circumstances, the total time allotted for the duration of the two states combined shall be

47 no more than 60 days unless the Governor follows the requirements for extending the state of
48 emergency under subsection (b)(1) of this section.

49 (d) The Governor shall have the following delineated powers which are intended to be
50 strictly construed to authorize only those actions that are consistent with constitutional or statutory
51 law, or with final orders of those courts of competent jurisdiction to which the Governor is subject:

52 (1) So long as a ~~state of emergency or~~ state of preparedness exists, the Governor has
53 and may exercise the following additional emergency powers:

54 ~~(4)~~ (2) To enforce all laws and rules relating to the provision of emergency services and
55 to assume direct operational control of any or all emergency service forces and helpers in the
56 state;

57 ~~(2)~~ (A) To sell, lend, lease, give, or transfer property, make purchases, or deliver materials
58 or perform functions relating to emergency services on terms and conditions he or she prescribes
59 and without regard to the limitations of any existing law and to account to the State Treasurer for
60 any funds received for the property;

61 ~~(3)~~ ~~To procure materials and facilities for emergency services by purchase, condemnation~~
62 ~~under the provisions of chapter fifty-four of this code or seizure pending institution of~~
63 ~~condemnation proceedings within thirty days from the seizing thereof and to construct, lease,~~
64 ~~transport, store, maintain, renovate or distribute the materials and facilities. Compensation for~~
65 ~~property so procured shall be made in the manner provided in chapter fifty-four of this code~~

66 (4) (B) To obtain the services of necessary personnel, required during the emergency, and
67 to compensate them for their services from his or her contingent funds or other funds available to
68 him or her;

69 ~~(5)~~ ~~To provide and compel the evacuation of all or part of the population from any stricken~~
70 ~~or threatened area within the state and to take steps that are necessary for the receipt and care~~
71 ~~of the evacuees;~~

72 ~~(6)~~ ~~To control ingress and egress to and from a disaster area or an area where large-scale~~

73 ~~threat exists, the movement of persons within the area and the occupancy of premises therein~~

74 ~~(7) (C)~~ To suspend the provisions of any regulatory statute prescribing the procedures for
75 conduct of state business or the orders, rules of any state agency, if strict compliance therewith
76 would in any way prevent, hinder or delay necessary action in coping with the emergency;

77 ~~(8) (D)~~ To use available resources of the state and of its political subdivisions that are
78 reasonably necessary to cope with the emergency;

79 ~~(9) (E)~~ To suspend or limit the sale, dispensing or transportation of alcoholic beverages,
80 explosives and combustibles;

81 ~~(10) (F)~~ To make provision for the availability and use of temporary emergency housing;
82 and

83 ~~(14)~~ To perform and exercise other functions, powers and duties that are necessary to
84 promote and secure the safety and protection of the civilian population.

85 (3) In the event of the declaration of a state of emergency, the Governor shall have and
86 may exercise all the preceding powers delineated in this section for use in a state of
87 preparedness, as well as the following additional emergency powers:

88 (A) To procure facilities for emergency services by purchase, condemnation under the
89 provisions of Chapter 54 of this code or seizure pending institution of condemnation proceedings
90 within 30 days from the seizing thereof and to construct, lease, transport, store, maintain, renovate
91 or distribute the materials and facilities. Compensation for property so procured shall be made in
92 the manner provided in Chapter 54 of this code;

93 (B) To provide and compel the evacuation of all or part of the population from any stricken
94 or threatened area within the state and to take steps that are necessary for the receipt and care
95 of the evacuees; and

96 (C) To control ingress and egress to and from a disaster area or an area where large-
97 scale threat exists, the movement of persons within the area and the occupancy of premises
98 therein.

99 ~~(d)~~ (e) The declaration of a state of preparedness has the same effect as a declaration of
100 a state of emergency for the purposes of the Emergency Management Assistance Compact
101 established in §15-5-22 of this code and the Statewide Mutual Aid Systems set forth in §15-5-28
102 of this code.

103 (f) Any proclamation or resolution issued under this section must include, in general terms:

104 (1) a description of the nature of the disaster;

105 (2) a designation of the geographic area threatened; and

106 (3) a description of the conditions that have either:

107 (A) caused the state of emergency or preparedness; or

108 (B) made possible the termination of the state of emergency or preparedness.

109 Any such proclamation or resolution shall be disseminated as expeditiously as possible by
110 means which are calculated to bring its contents to the attention of the general public and the
111 Joint Committee on Government and Finance of the Legislature and, unless the circumstances
112 attendant to the state of emergency or preparedness shall prevent or impede such filing, shall be
113 promptly filed with the Secretary of State.

114 ~~(e)~~ (g) The powers granted under this section do not authorize any action that would violate
115 the prohibitions of §15-5-19 of this code.

116 (h) Any suit filed challenging an executive order issued relating to a state of preparedness
117 or emergency pursuant to the authority granted in this section shall be limited to a petition for
118 prohibition or mandamus pursuant to Rule 16 of the Rules of Appellate Procedure of the West
119 Virginia Supreme Court of Appeals. The provisions of §55-17-3 of this code are not applicable to
120 any suit filed challenging an executive order issued pursuant to this section.

NOTE: The purpose of this bill is to clarify the authority and obligations of the Governor and Legislature relating to declared states of preparedness and emergencies; clarifying the authority of the Governor; providing requirements for any proclamation or resolution so issued; and providing directives for lawsuits filed challenging actions taken pursuant to the authority granted herein.

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