

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **House Bill 3477**

By Delegate Dillon

[Introduced February 14, 2023; Referred to the  
Committee on Government Organization then the  
Judiciary]

1 A BILL to amend and reenact §15-5-6 of the Code of West Virginia, 1931, as amended, relating to  
 2 the clarification of the Governor's management provisions after a State of Emergency is  
 3 announced.

*Be it enacted by the Legislature of West Virginia:*

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

**§15-5-6. Clarification of Emergency Management powers Provisions of Governor.**

1 The announcement of a State of Emergency or State of Preparedness by the Governor  
 2 shall be for public awareness purposes alone. It shall not establish conditions for any new or  
 3 expanded powers of the Governor. No provision of this section of code shall be construed as to  
 4 expand the powers of the Governor beyond those authorized by the Constitution of the State of  
 5 West Virginia. The Legislature recognizes the role of the Governor in overseeing a swift and  
 6 effective response to unusual and emerging circumstances that could include disasters or other  
 7 disturbances. The Legislature recognizes the constitutional role of the Governor as commander-  
 8 in-chief of the military forces of the State of West Virginia. Neither the military forces nor law  
 9 enforcement of West Virginia shall at any time deprive any individual of due process of law. The  
 10 Governor may, at any time during an emergency or otherwise, with or without declaring a state of  
 11 emergency, direct efforts to address a critical or emergent need or set of circumstances by  
 12 coordinating agencies, divisions, or departments toward addressing a common need or threat.  
 13 Such coordinating effort may include facilitation of communications between government  
 14 agencies, divisions, or departments, or establishing a command center during a crisis.  
 15 Coordinating efforts may also include receiving frequent reports from agencies, departments,  
 16 and/or divisions, and compiling requests for funding of necessary resources in order to request  
 17 necessary appropriations or other actions from Legislature. As per Article 7, Section 7 of the WV  
 18 Constitution, the Governor may, at any time during an emergency or otherwise, "on extraordinary

19 occasions," convene the Legislature to appropriate such funds or pass such legislation as may be  
20 required to address an emergent need. The Legislature also recognizes the power of the Governor  
21 to:

22 ~~(a) The provisions of this section are operative only during the existence of a state of~~  
23 ~~emergency or state of preparedness. The existence of a state of emergency or state of~~  
24 ~~preparedness may be proclaimed by the Governor or by concurrent resolution of the Legislature if~~  
25 ~~the Governor in the proclamation, or the Legislature in the resolution, finds that an attack upon the~~  
26 ~~United States has occurred or is anticipated in the immediate future, or that a natural or man-made~~  
27 ~~disaster of major proportions has actually occurred or is imminent within the state, or that an~~  
28 ~~emergency exists or may be imminent due to a large-scale threat beyond local control, and that~~  
29 ~~the safety and welfare of the inhabitants of this state require an invocation of the provisions of this~~  
30 ~~section.~~

31 ~~(b) Any state of emergency or state of preparedness, whether proclaimed by the Governor~~  
32 ~~or by the Legislature, terminates upon the proclamation of the termination by the Governor, or the~~  
33 ~~passage by the Legislature of a concurrent resolution terminating the state of emergency or state~~  
34 ~~of preparedness: Provided, That in no case shall a state of preparedness last longer than thirty~~  
35 ~~days.~~

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

38 ~~(1) To enforce all laws and rules relating to the provision of emergency services and to~~  
39 ~~assume direct operational control of any or all emergency service forces and helpers in the state;~~

40 ~~(2) To sell, lend, lease, give, transfer or deliver materials or perform functions relating to~~  
41 ~~emergency services on terms and conditions he or she prescribes and without regard to the~~  
42 ~~limitations of any existing law and to account to the State Treasurer for any funds received for the~~  
43 ~~property;~~

44 ~~(3) To procure materials and facilities for emergency services by purchase, condemnation~~

45 ~~under the provisions of chapter fifty-four of this code or seizure pending institution of~~  
46 ~~condemnation proceedings within thirty days from the seizing thereof and to construct, lease,~~  
47 ~~transport, store, maintain, renovate or distribute the materials and facilities. Compensation for~~  
48 ~~property so procured shall be made in the manner provided in chapter fifty-four of this code;~~

49 ~~(4) To obtain the services of necessary personnel, required during the emergency, and to~~  
50 ~~compensate them for their services from his or her contingent funds or other funds available to him~~  
51 ~~or her;~~

52 ~~(5) (1) To Suggest and assist provide and compel the evacuation of all or part of the~~  
53 ~~population from any stricken or threatened area within the state and to take steps that are~~  
54 ~~necessary for the receipt and care of the evacuees;~~

55 ~~(6) (2) To Control general ingress and egress or provide alternative routes, to, and from, or~~  
56 ~~around a disaster area, or an area where large-scale threat exists, assist the movement of persons~~  
57 ~~within the area and the occupancy of premises therein, prevent ingress provided that no individual~~  
58 ~~or group of individuals may be prevented ingress or egress from their home, place of work or~~  
59 ~~business, real property, storage of provisions or personal property, or access to family or loved~~  
60 ~~ones, without due process of law.~~

61 ~~(7) (3) To Request that Legislature, for a specified time, suspend the provisions of any~~  
62 ~~regulatory statute prescribing the procedures for conduct of state business or the orders, rules of~~  
63 ~~any state agency, if strict compliance therewith would in any way prevent, hinder or delay~~  
64 ~~necessary action in coping with the emergency;~~

65 ~~(8) (4) To Use available resources of the state and of its political subdivisions that are~~  
66 ~~reasonably necessary to cope with the emergency;~~

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

69 ~~(10) (5) To Make provision for the availability and use of temporary emergency housing;~~  
70 ~~and~~

71            ~~(11)~~ (6) To Perform and exercise other functions, powers and duties that are necessary to  
72 promote and secure the safety and protection of the civilian population.

73            ~~(d) The declaration of a state of preparedness has the same effect as a declaration of a~~  
74 ~~state of emergency for the purposes of the Emergency Management Assistance Compact~~  
75 ~~established in section twenty-two of this article and the Statewide Mutual Aid Systems set forth in~~  
76 ~~section twenty-eight of this article.~~

77            ~~(e) The powers granted under this section do not authorize any action that would violate~~  
78 ~~the prohibitions of section nineteen-a of this article~~

NOTE: The purpose of this bill is to clarify the Governor's management provisions after a state of emergency is announced.

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