

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 587

FISCAL
NOTE

By Senators Chapman and Karnes

[Introduced February 08, 2023; referred
to the Committee on Military; and then to the
Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §15-5A-1, §15-5A-2, §15-5A-3, §15-5A-4, §15-5A-5, §15-5A-6, §15-5A-7, and
 3 §15-5A-8, all relating to enacting the West Virginia Volunteer State Defense Guard Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5A: THE WEST VIRGINIA STATE DEFENSE GUARD ACT.

§15-5A-1. Creation and Authorization.

4 The West Virginia Volunteer State Guard is created as authorized under federal law for use
 5 exclusively within the state, activated only by the Governor under the specific limitations created
 6 by this section, and is always under the final command and control of the Governor as commander
 7 in chief of all military and guard forces of the state. The West Virginia Volunteer State Guard is
 8 created and authorized as a component of the organized guard separate and apart from the West
 9 Virginia National Guard and shall be used exclusively within the state for the purposes stated in
 10 this section and may not be called, ordered, or drafted into the armed forces of the United States.
 11 The authorized maximum number of personnel that may be commissioned, or enrolled as
 12 members of the West Virginia Volunteer State Guard is 400.

§15-5A-2. Definitions.

1 As used in this section:

2 (a) The terms "active duty," "armed forces," "enlisted personnel," "National Guard," and
 3 "rank" have the same meanings as in §15-1E-1, et seq. of this code.

4 (b) The term "department" means the Department of Military Affairs.

5 (c) The term "officer" means an officer commissioned by the Governor.

6 (d) The term "organized guard" means an organized military force that is authorized by law.

7 (e) The term "warrant officer" means a technical specialist commissioned as a warrant
 8 officer by the Governor.

§15-5A-3. Adjutant General.

9 The Adjutant General is always the commanding general of the West Virginia Volunteer

10 State Guard and is subject to the Governor as commander in chief. The Adjutant General is
11 responsible for organizing, recruiting, training, equipping, managing, and disciplining the West
12 Virginia Volunteer State Guard, including selecting units for activation by the Governor, selecting
13 candidates for commissioning by the Governor, and approving applicants as enlisted personnel.

§15-5A-4. Personnel.

14 (a) Subject to approval by the Governor, with the advice and consent of the West Virginia
15 State Senate, the Adjutant General shall determine the number of officers, warrant officers, and
16 enlisted personnel necessary to meet the staffing and operational requirements of the West
17 Virginia Volunteer State Guard and determine the specific ranks and number of personnel within
18 each rank.

19 (b) The Governor shall commission all officers and warrant officers of the West Virginia
20 Volunteer State Guard.

21 (c) Each applicant for the West Virginia Volunteer State Guard shall meet the following
22 qualifications:

23 (1) The applicant shall be a citizen of the United States and a resident of the state.

24 (2) The applicant cannot have a felony conviction. Each applicant shall submit a complete
25 set of fingerprints and all information required by state and federal law to process fingerprints for
26 purposes of conducting a criminal background check.

27 (3) The applicant may not be an active-duty service-member, a member of the armed
28 forces reserves, or a member of the West Virginia National Guard.

29 (4) If the applicant is a former member of the armed forces, the applicant must have been
30 separated under terms no less than a general discharge under honorable conditions.

31 (d) The Adjutant General shall establish minimum standards for the age, physical and
32 health condition, and physical fitness of applicants which are no less than the standards required
33 for recruitment, enrollment, and retention in the West Virginia National Guard.

34 (e) The Adjutant General shall develop and implement a code of regulations for the

35 administration and discipline of members of the West Virginia Volunteer State Guard. The
36 Adjutant General shall have no authority to impose any term of incarceration.

§15-5A-5. Training and Equipment.

37 The Adjutant General shall develop and implement a program for training for members of
38 the West Virginia Volunteer State Guard as follows:

39 (a) All training programs for the West Virginia Volunteer State Guard shall be at least
40 equivalent to the training requirements for members of the West Virginia National Guard under
41 applicable federal law at the time the training is conducted. As required by the Adjutant General, all
42 members of the West Virginia Volunteer State Guard shall complete initial training within 180 days
43 after their appointment or enrollment and periodic ongoing training.

44 (b) The Adjutant General may provide for staff to prepare and conduct training required in
45 this section. The staff may include members of the West Virginia National Guard whose duty
46 assignments may include conducting training under this section but who may not be considered
47 members of the West Virginia Volunteer State Guard.

48 (c) The Adjutant General shall provide all equipment necessary for the training and service
49 of members of the West Virginia Volunteer State Guard.

50 (d) The Adjutant General may make available for training and other purposes under this
51 section the facilities controlled and operated by the department.

§15-5A-6. Activation of The West Virginia Volunteer State Guard.

1 (a) The West Virginia Volunteer State Guard, by component units or in total, may be
2 activated during any period when any part of the West Virginia National Guard is in active federal
3 service and the Governor has declared a state of emergency. If the West Virginia National Guard is
4 otherwise called to duties, the West Virginia Volunteer State Guard may be activated.

5 (b) The West Virginia Volunteer State Guard may be activated only to preserve the public
6 peace, execute the laws of the state, enhance domestic security, respond to terrorist threats or
7 attacks, respond to an emergency or imminent danger thereof, or respond to any need for

8 emergency aid to civil authorities.

9 (c) The West Virginia Volunteer State Guard shall be deactivated by the expiration of the
10 order of activation or by a separate order by the Governor deactivating the West Virginia Volunteer
11 State Guard.

§15-5A-7. Suspension of Proceedings, Liability.

1 (a) Members of the West Virginia Volunteer State Guard ordered into active service or
2 engaged in required training are not liable for any lawful act done in performance of their duties
3 under this section while acting in good faith within the scope of those duties.

4 (b) While activated or in training, members of the West Virginia Volunteer State Guard are
5 considered volunteers for the state.

§15-5A-8. Rulemaking Authority.

1 The Adjutant General, as head of the department, shall adopt rules to implement the
2 provisions of this section:

3 (1) Authority and name. - Whenever any part of the National Guard of this state is in active
4 federal service, the Governor is hereby authorized to organize and maintain, within this state
5 during such period, under such regulations as the Secretary of Defense of the United States may
6 prescribe for discipline in training, such military forces as the Governor may deem necessary to
7 assist the civil authorities in maintaining law and order. Such forces shall be composed of officers
8 commissioned or assigned, and such able-bodied citizens of the state as shall volunteer for
9 service therein, supplemented, if necessary, by personnel of the West Virginia National Guard
10 enrolled by draft or otherwise, as provided by law. Such forces shall be additional to and distinct
11 from the National Guard and shall be known as the West Virginia State Defense Force. Such
12 forces shall be uniformed.

13 (2) The Governor is authorized to maintain a West Virginia State Defense Force reserve
14 cadre of officers and noncommissioned officers, said officers to be a trained nucleus for such time
15 as the West Virginia State Defense Force may be activated. Said officers shall be volunteers and

16 shall serve with no pay or allowances except when called to active duty.

17 (3) Organization; rules and regulations. - The Adjutant General is hereby authorized to
18 prescribe military regulations, not inconsistent with the provisions of this chapter, governing the
19 enlistment, organization, administration, equipment, maintenance, training and discipline of such
20 West Virginia State Defense Force; provided, such military regulations, insofar as the Adjutant
21 General deems practicable and desirable, shall conform to existing law governing and pertaining
22 to the National Guard and the military regulations promulgated thereunder; and prohibit the
23 acceptance of gifts, donations, gratuities, or anything of value, by such West Virginia State
24 Defense Force, or by any member of such West Virginia State Defense Force, from any individual,
25 firm, association, or corporation, by reason of such membership.

26 (4) Pay and allowances. - The members of the West Virginia State Defense Force shall
27 receive no pay and allowances.

28 (5) Requisitions; armories; other buildings. - For the use of such West Virginia State
29 Defense Force, the Governor is hereby authorized to requisition from the Secretary of Defense
30 such arms and equipment as may be in possession of, and can be spared by, the Defense
31 Department; and to make available to such West Virginia State Defense Force the facilities of
32 state armories and their equipment and such other state premises and property as may be
33 available.

34 (6) Calling out of defense force. - The West Virginia State Defense Force may be called out
35 to aid the civil authorities as now provided by the law for calling out the National Guard; except
36 whenever the Adjutant General would be authorized to call out the West Virginia State Defense
37 Force, but is unable to do so for any reason, the Adjutant General's assistant shall have such
38 authority.

39 (7) Use outside this state. - Such West Virginia State Defense Force shall not be required
40 to serve outside the boundaries of this state, except that any organization, unit, or detachment of
41 such West Virginia State Defense Force, upon order of the officer in immediate command thereof,

42 may continue in fresh pursuit of insurrectionists, saboteurs, enemies, or enemy forces beyond the
43 borders of this state into another state until they are apprehended or captured by such
44 organization, unit, or detachment, or until the military or police forces of the other state, or the
45 forces of the United States, have had a reasonable opportunity to take up the pursuit or to
46 apprehend or capture such persons; provided, such other state shall have given authority by law
47 for such pursuit by such West Virginia State Defense Force. Any such person, who shall be
48 apprehended or captured in such other state by an organization, unit, or detachment of the West
49 Virginia State Defense Force, shall, without unnecessary delay, be surrendered to the military or
50 police forces of the state in which she or he is taken or to the United States; but such surrender
51 shall not constitute a waiver by this state of its right to extradite or prosecute such person for any
52 crime committed in this state.

53 (8) Permission to forces of other states in fresh pursuit. - Any military forces or
54 organization, unit or detachment thereof, of another state, who are in fresh pursuit of
55 insurrectionists, saboteurs, enemies or enemy forces, may continue such pursuit into this state
56 until the military or police forces of this state or the forces of the United States, have had a
57 reasonable opportunity to take up the pursuit or to apprehend or capture such persons; and they
58 are hereby authorized to arrest or capture such persons within this state while in fresh pursuit. Any
59 such person, who shall be captured or arrested by the military forces of such other state while in
60 this state, shall without unnecessary delay be surrendered to the military or police forces of this
61 state to be dealt with according to law. This section shall not be construed so as to make unlawful
62 any arrest in this state which would otherwise be lawful.

63 (9) Federal service. - Nothing in this chapter shall be construed as authorizing such West
64 Virginia State Defense Force, or any part thereof, to be called, ordered, or in any manner drafted,
65 as such, into the military service of the United States; but, no person shall, by reason of her or his
66 enlistment or commission in any such West Virginia State Defense Force, be exempted from
67 military service under any law of the United States.

68 (10) Civil groups. - No civil organization, society, club, post, order, fraternity, association,
69 brotherhood, body, union, league, or other combination of persons, or civil groups, shall be
70 enlisted in such West Virginia State Defense Force as an organization or unit.

71 (11) Disqualifications. - No person shall be commissioned or enlisted in such West Virginia
72 State Defense Force who is not a citizen of the United States, or who has been expelled or
73 dishonorably discharged from any military or naval organization of this state, or of another state, or
74 of the United States.

75 (12) Commissioned officers.—The term of commission in the West Virginia State Defense
76 Force shall be for three years, subject to termination at the pleasure of the Governor prior to the
77 expiration of such period. The oath to be taken by officers commissioned in such West Virginia
78 State Defense Force shall be substantially in the form prescribed for officers of the National Guard,
79 substituting the words "West Virginia State Defense Force" where necessary, and omitting the
80 reference to the President of the United States. The subject term of three years may be extended
81 by express direction of the Governor.

82 (13) Enlisted personnel. - The term of enlistment in the West Virginia State Defense Force
83 shall be for three years, subject to termination at the pleasure of the Governor prior to the
84 expiration of such period. The oath to be taken upon enlistment in such West Virginia State
85 Defense Force shall be substantially in the form prescribed for enlisted personnel of the National
86 Guard, substituting the words "West Virginia State Defense Force" where necessary, and omitting
87 the reference to the President of the United States. The subject term of three years may be
88 extended by express direction of the Governor.

89 (14) Uniform Code of Military Justice; freedom from arrest; jury duty.

90 (A) Whenever such West Virginia State Defense Force, or any part thereof, shall be
91 ordered out for active service, the Uniform Code of Military Justice of the United States, applicable
92 to members of the National Guard of this state in relation to courts-martial, their jurisdiction and the
93 limits of punishment, and the rules and regulations prescribed thereunder, shall be in full force and

94 effect with respect to the West Virginia State Defense Force.

95 (B) No officer or enlisted person of such West Virginia State Defense Force shall be
96 arrested on any warrant, except for treason or felony, while going to, remaining at, or returning
97 from, a place where such person is ordered to attend for military duty. Every officer and enlisted
98 person of such West Virginia State Defense Force shall, during such person's service therein, be
99 exempt from service upon any posse comitatus, and from jury duty.

100 (15) Discharge of West Virginia State Defense Force.—The West Virginia State Defense
101 Force shall be discharged by the Governor upon the return of the National Guard to state control,
102 or within 30 days thereafter, subject however to the provision of s. 251.01(2).

103 (16) Short title.—This article may be cited as the "West Virginia State Defense Force."

104 (17) Awards to officers and enlisted personnel.—The Adjutant General of the state be and
105 is hereby authorized and directed to cause to be prepared suitable medals, service bars, ribbons,
106 awards, or other indicia of service in West Virginia State Defense Force; to prescribe regulations
107 for awarding such medals, service bars, ribbons, awards, or other indicia of service in West
108 Virginia State Defense Force to the officers and enlisted personnel of said West Virginia State
109 Defense Force and from time to time to make such awards to the officers and enlisted personnel of
110 said West Virginia State Defense Force entitled to receive the same.

NOTE: The purpose of this bill is to establish the West Virginia Volunteer State Defense Guard. The West Virginia National Guard is often called to other duties such as filling roles as corrections officers in West Virginia prisons, filling staffing shortages in our West Virginia hospitals, etc. Knowing that natural disasters often plague our state, West Virginia is left vulnerable when the National Guard is called to other duties. This volunteer state guard will not cost the taxpayers any money.

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