

SB 634

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**WEST VIRGINIA LEGISLATURE**

**SEVENTY-EIGHTH LEGISLATURE**

**REGULAR SESSION, 2008**

SECRETARY OF STATE

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COMMITTEE SUBSTITUTE

FOR

**ENROLLED**

**Senate Bill No. 634**

(SENATORS HUNTER, HELMICK, PLYMALE, MINARD,  
KESSLER AND UNGER, *original sponsors*)

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[Passed March 6, 2008; in effect from passage.]

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FOR

## Senate Bill No. 634

(SENATORS HUNTER, HELMICK, PLYMALE, MINARD,  
KESSLER AND UNGER, *original sponsors*)

[Passed March 6, 2008; in effect from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §15-1J-1, §15-1J-2, §15-1J-3, §15-1J-4 and §15-1J-5, all relating to the West Virginia Military Authority Act; authorizing the authority to administer programs and receive funds; and giving the authority certain powers and duties.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §15-1J-1, §15-1J-2, §15-1J-3, §15-1J-4 and §15-1J-5, all to read as follows:

**ARTICLE 11. THE WEST VIRGINIA MILITARY AUTHORITY ACT.**

**§15-1J-1. Short title.**

1 This article shall be known and may be cited as the  
2 West Virginia Military Authority Act.

**§15-1J-2. Legislative findings.**

1 The Legislature finds that the West Virginia National  
2 Guard is a unique entity that has a dual mission for  
3 both West Virginia and the United States. In this dual  
4 capacity, the West Virginia National Guard receives  
5 funds to administer programs, including the hiring of  
6 employees, that the federal government, including the  
7 Department of Defense, provides to the guard in  
8 support of specific activities for various federal agencies  
9 for national security and homeland security purposes.  
10 These programs fulfill specific agency purposes and  
11 necessarily require continued funding by the federal  
12 government.

13 Additionally, the guard continues to receive federal  
14 funding to develop and maintain capabilities to house,  
15 refurbish, rebuild and maintain military equipment and  
16 conduct other test and operational activities to support  
17 national and homeland security objectives. These  
18 activities require the guard to hire persons who will be  
19 compensated, in whole or in part, with federal funds. It

20 is further determined and declared that it is necessary  
21 for the guard to develop and implement a procedure for  
22 hiring and management of nonmilitary employees to  
23 support its specific missions.

**§15-1J-3. Definitions.**

1 As used in this article, unless the content clearly  
2 indicates otherwise:

3 (a) "Authority" means the West Virginia Military  
4 Authority.

5 (b) "BRIM" means the West Virginia Board of Risk  
6 Management.

7 (c) "Guard" means West Virginia National Guard,  
8 including its Army and Air components.

9 (d) "Employee" means any person who, within the  
10 at-will employment relationship, is hired, performs  
11 duties and is paid a wage or salary which cost is, in  
12 whole or in part, reimbursed by the federal government  
13 pursuant to a contract or memorandum of  
14 understanding between the federal government and the  
15 guard.

16 (e) "PEIA" means Public Employees Insurance Act.

17 (f) "PERS" means Public Employee's Retirement  
18 System.

**§15-1J-4. Establishment and general powers of the authority.**

1 (a) The West Virginia Military Authority is hereby

2 established to administer national security, homeland  
3 security and other military-related programs that  
4 provide for the reimbursement, in whole or in part, of  
5 employee wages or salaries pursuant to a contract or  
6 memorandum of understanding between the federal  
7 government and the guard. The authority to administer  
8 programs granted in this subsection shall terminate  
9 when federal funds are no longer available to provide  
10 reimbursement of salaries or wages.

11 (b) The authority will be administered by the Adjutant  
12 General and the Adjutant General's department.

13 (c) Funds provided by the federal government and any  
14 state funds authorized by appropriation of the  
15 Legislature used as a required match to secure federal  
16 funding for programs administered by the authority  
17 pursuant to this section shall be administered by the  
18 Adjutant General subject to the provisions of article  
19 eleven, chapter four of this code.

20 (d) Except as otherwise prohibited by statute, the  
21 authority, as a governmental instrumentality exercising  
22 public powers of the state, shall have and may exercise  
23 all powers necessary or appropriate to carry out the  
24 purpose of this article, including the authority to:

25 (1) Execute cooperative agreements between the guard  
26 and the federal and/or state governments;

27 (2) Contract on behalf of the guard with the federal  
28 government, its instrumentalities and agencies, the  
29 state, its agencies and instrumentalities, municipalities,  
30 foreign governments, public bodies, private  
31 corporations, partnerships, associations and individuals;

32 (3) Use funds administered by the authority pursuant  
33 to subsection (c) of this section for the maintenance,  
34 construction or reconstruction of capital repair and  
35 replacement items as necessary and approved by the  
36 authority;

37 (4) Procure insurance with state funds through BRIM  
38 covering property and other assets of the authority in  
39 amounts and from insurers that BRIM determines  
40 necessary;

41 (5) Hire employees at an appropriate salary equivalent  
42 to a competitive wage rate;

43 (6) Enroll employees in PERS, PEIA and workers'  
44 compensation and unemployment programs, or their  
45 equivalents: *Provided*, That the authority, through the  
46 receipt of federal and/or state funds, pays the required  
47 employer contributions;

48 (7) Cooperate with economic development agencies in  
49 efforts to promote the expansion of industrial,  
50 commercial and manufacturing in the state;

51 (8) Develop a human resources division that will  
52 administer and manage its employees and receive state  
53 matching funds as necessary to ensure maximum federal  
54 funds are secured;

55 (9) Due to the at-will employment relationship with  
56 the authority, its employees may not avail themselves of  
57 the state grievance procedure as set forth in article  
58 six-a, chapter twenty-nine of this code; and

59 (10) Have the ability to secure all other bonding,

60 insurance or other liability protections necessary for its  
61 employees to fulfill their duties and responsibilities.

**§15-1J-5. Employees.**

1 (a) The authority shall have the power to hire,  
2 administer and manage employees necessary to fulfill its  
3 responsibilities.

4 (1) All employees will be exempt from both the  
5 classified services category and the classified exempt  
6 services category as set forth in section four, article six,  
7 chapter twenty-nine of this code.

8 (2) Employee positions are contingent on the receipt of  
9 the necessary federal and/or state funds.

10 (3) Each employee hired shall be deemed an at-will  
11 employee who may be discharged or released from his or  
12 her respective position without cause or reason.

13 (4) Employees will participate in the PEIA, PERS and  
14 workers' compensation and unemployment  
15 compensation programs, or their equivalents. Public  
16 safety-related positions will continue to require dual  
17 status membership as outlined in section twenty-six,  
18 article one-b, chapter fifteen of this code.

19 (b) The Adjutant General will set appropriate salary  
20 rates for employees equivalent to a competitive wage  
21 rate necessary to support a specific mission.

22 (c) Security guards and military firefighters hired by  
23 the authority under the provisions of this article will  
24 continue to have the same authority and must meet the

25 requirements as set forth in section twenty-two, article  
26 one-b, chapter fifteen of this code and section  
27 twenty-six of said article.



Enr. Com. Sub for S. B. No. 634] 8

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

.....  
*Chandy White*  
.....  
Chairman Senate Committee

.....  
*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

.....  
*[Signature]*  
.....  
Clerk of the Senate

.....  
*[Signature]*  
.....  
Clerk of the House of Delegates

.....  
*Carl Ray Tomblin*  
.....  
President of the Senate

.....  
*[Signature]*  
.....  
Speaker House of Delegates

The within *is approved* ..... this  
the *20<sup>th</sup>* Day of *March* ....., 2008.

.....  
*[Signature]*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 14 2008

Time 11:25 Am