

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 326

FISCAL
NOTE

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND

PREZIOSO

(BY REQUEST OF THE EXECUTIVE)

[Introduced January 16, 2019; Referred
to the Committee on Government Organization; and then
to the Committee on Finance]

1 A BILL to repeal §15-5-4 and §15-5-25 of the Code of West Virginia, 1931, as amended; to amend
 2 and reenact §5F-2-1 of said code; to amend and reenact §15-1J-2 and §15-1J-4 of said
 3 code; to amend and reenact §15-5-1, §15-5-2, §15-5-3, §15-5-4b, §15-5-4c, §15-5-13,
 4 §15-5-24, and §15-5-26 of said code; and to amend and reenact §29-31-2, §29-31-3, and
 5 §29-31-4 of said code, all relating to the reorganization of state agencies involved in
 6 emergency and disaster planning, response, recovery, and resiliency; providing legislative
 7 findings; modifying the powers and duties of the West Virginia Military Authority;
 8 designating a special revenue account to receive funding; creating the position of Director
 9 of the Military Authority and providing qualifications; modifying definitions; reorganizing the
 10 Division of Homeland Security and Emergency Management (DHSEM) within the Adjutant
 11 General's Department; authorizing the DHSEM director to be appointed to serve in a dual
 12 capacity as the Director of the Military Authority; modifying membership of the West
 13 Virginia Disaster Recovery Board; reorganizing the State Resiliency Office within the
 14 Adjutant General's Department; creating the position of Director of the State Resiliency
 15 Office; eliminating the State Resiliency Office Board; and modifying the authority and
 16 duties of the State Resiliency Office.

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-2-1. Transfer and incorporation of agencies and boards; funds.

1 (a) The following agencies and boards, including all of the allied, advisory, affiliated or
 2 related entities and funds associated with any agency or board, are incorporated in and
 3 administered as a part of the Department of Administration:

4 (1) Public Employees Insurance Agency provided in §5-16-1 *et seq.* of this code;

5 (2) Governor's Mansion Advisory Committee provided in §5A-5-1 *et seq.* of this code;

6 (3) Commission on Uniform State Laws provided in §29-1A-1 *et seq.* of this code;

7 (4) West Virginia Public Employees Grievance Board provided in §6C-3-1 *et seq.* of this
8 code;

9 (5) Board of Risk and Insurance Management provided in §29-12-1 *et seq.* of this code;

10 (6) Boundary Commission provided in §29-23-1 *et seq.* of this code;

11 (7) Public Defender Services provided in §29-21-1 *et seq.* of this code;

12 (8) Division of Personnel provided in §29-6-1 *et seq.* of this code;

13 (9) The West Virginia Ethics Commission provided in §6B-2-1 *et seq.* of this code;

14 (10) Consolidated Public Retirement Board provided in §5-10D-1 *et seq.* of this code; and

15 (11) Real Estate Division provided in §5A-10-1 *et seq.* of this code.

16 (b) The following agencies and boards, including all of the allied, advisory, affiliated, or
17 related entities and funds associated with any agency or board, are incorporated in and
18 administered as a part of the Department of Commerce:

19 (1) Division of Labor provided in §21-1-1 *et seq.* of this code, which includes:

20 (A) Occupational Safety and Health Review Commission provided in §21-3A-1 *et seq.* of
21 this code; and

22 (B) Board of Manufactured Housing Construction and Safety provided in §21-9-1 *et seq.*
23 of this code.

24 (2) Office of Miners' Health, Safety and Training provided in §22A-1-1 *et seq.* of this code.

25 The following boards are transferred to the Office of Miners' Health, Safety and Training for
26 purposes of administrative support and liaison with the Office of the Governor:

27 (A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review
28 Committee provided in §22A-6-1 *et seq.* of this code;

29 (B) Board of Miner Training, Education and Certification provided in §22A-7-1 *et seq.* of
30 this code; and

- 31 (C) Mine Inspectors' Examining Board provided in §22A-9-1 *et seq.* of this code.
- 32 (3) The West Virginia Development Office provided in §5B-2-1 *et seq.* of this code;
- 33 (4) Division of Natural Resources and Natural Resources Commission provided in §20-1-
- 34 1 *et seq.* of this code;
- 35 (5) Division of Forestry provided in §19-1A-1 *et seq.* of this code;
- 36 (6) Geological and Economic Survey provided in §29-2-1 *et seq.* of this code; and
- 37 (7) Workforce West Virginia provided in chapter 21A of this code, which includes:
- 38 (A) Division of Unemployment Compensation;
- 39 (B) Division of Employment Service;
- 40 (C) Division of Workforce Development; and
- 41 (D) Division of Research, Information and Analysis.
- 42 (8) Office of Energy, within the Development Office, provided in §5B-2F-1 *et seq.* of this
- 43 code.
- 44 (9) West Virginia Tourism Office and Tourism Commission provided in §5B-2I-1 *et seq.* of
- 45 this code; and
- 46 (10) Division of Rehabilitation Services provided in §18-10A-1 *et seq.* of this code.
- 47 (c) The Economic Development Authority provided in §31-15-1 *et seq.* of this code is
- 48 continued as an independent agency within the executive branch.
- 49 (d) The Water Development Authority and the Water Development Authority Board
- 50 provided in §22C-1-1 *et seq.* of this code is continued as an independent agency within the
- 51 executive branch.
- 52 (e) The West Virginia Educational Broadcasting Authority provided in §10-5-1 *et seq.* of
- 53 this code and the State Library Commission provided in §10-1-1 *et seq.* of this code are each
- 54 continued as separate independent agencies within the Department of Arts, Culture and History,
- 55 which shall provide administrative support for both entities.

56 (f) The Division of Culture and History as established in §29-1-1 *et seq.* of this code is
57 continued as a separate independent agency within the Executive Branch as the Department of
58 Arts, Culture and History. All references throughout this code to the “Division of Culture and
59 History” means the “Department of Arts, Culture and History”.

60 (g) The following agencies and boards, including all of the allied, advisory, and affiliated
61 entities, are transferred to the Department of Environmental Protection for purposes of
62 administrative support and liaison with the Office of the Governor:

63 (1) Air Quality Board provided in §22B-2-1 *et seq.* of this code;

64 (2) Solid Waste Management Board provided in §22C-3-1 *et seq.* of this code;

65 (3) Environmental Quality Board, or its successor board, provided in §22B-3-1 *et seq.* of
66 this code;

67 (4) Surface Mine Board provided in §22B-4-1 *et seq.* of this code;

68 (5) Oil and Gas Inspectors’ Examining Board provided in §22C-7-1 *et seq.* of this code;

69 (6) Shallow Gas Well Review Board provided in §22C-8-1 *et seq.* of this code; and

70 (7) Oil and Gas Conservation Commission provided in §22C-9-1 *et seq.* of this code.

71 (h) The following agencies and boards, including all of the allied, advisory, affiliated, or
72 related entities and funds associated with any agency or board, are incorporated in and
73 administered as a part of the Department of Health and Human Resources:

74 (1) Human Rights Commission provided in §5-11-1 *et seq.* of this code;

75 (2) Bureau for Public Health provided in §16-1-1 *et seq.* of this code;

76 (3) Office of Emergency Medical Services and the Emergency Medical Service Advisory
77 Council provided in §16-4C-1 *et seq.* of this code;

78 (4) Health Care Authority provided in §16-29B *et seq.* of this code;

79 (5) State Commission on Intellectual Disability provided in §29-15-1 *et seq.* of this code;

80 (6) Women’s Commission provided in §29-20-1 *et seq.* of this code; and

81 (7) Bureau for Child Support Enforcement provided in chapter 48 of this code.

82 (i) The following agencies and boards, including all of the allied, advisory, affiliated, or
83 related entities and funds associated with any agency or board, are incorporated in and
84 administered as a part of the Department of Military Affairs and Public Safety:

85 ~~(1) Adjutant General's Department provided in §15-1A-1 et seq. of this code;~~

86 ~~(2) State Armory Board provided in §15-6-1 et seq. of this code;~~

87 ~~(3) Military Awards Board provided in §15-1G-1 et seq. of this code~~

88 ~~(4) (1) West Virginia State Police provided in §15-2-1 et seq. of this code;~~

89 ~~(5) (2) Division of Homeland Security and Emergency Management and Disaster
90 Recovery Board provided in §15-5-1 et seq. of this code and Emergency Response Commission
91 provided in §15-5A-1 et seq. of this code;~~

92 ~~(6) (3) Sheriffs' Bureau provided in §15-8-1 et seq. of this code;~~

93 ~~(7) (4) Division of Justice and Community Services provided in §15-9A-1 et seq. of this
94 code;~~

95 ~~(8) (5) Division of Corrections provided in chapter 25 of this code;~~

96 ~~(9) (6) Fire Commission provided in §29-3-1 et seq. of this code;~~

97 ~~(10) (7) Regional Jail and Correctional Facility Authority provided in §31-20-1 et seq. of
98 this code; and~~

99 ~~(11) (8) Board of Probation and Parole provided in §62-12-1 et seq. of this code.~~

100 (j) The following agencies and boards, including all of the allied, advisory, affiliated or
101 related entities and funds associated with any agency or board, are incorporated in and
102 administered as a part of the Department of Revenue:

103 (1) Tax Division provided in chapter 11 of this code;

104 (2) Racing Commission provided in §19-23-1 et seq. of this code;

105 (3) Lottery Commission and position of Lottery Director provided in §29-22-1 of this code;

106 (4) Insurance Commissioner provided in §33-2-1 et seq. of this code;

107 (5) West Virginia Alcohol Beverage Control Commissioner provided in §11-16-1 *et seq.* of
108 this code and §60-2-1 *et seq.* of this code;

109 (6) Board of Banking and Financial Institutions provided in §31A-3-1 *et seq.* of this code;

110 (7) Lending and Credit Rate Board provided in chapter 47A of this code;

111 (8) Division of Financial Institutions provided in §31A-2-1 *et seq.* of this code;

112 (9) The State Budget Office provided in §11B-2-1 *et seq.* of this code;

113 (10) The Municipal Bond Commission provided in §13-3-1 *et seq.* of this code;

114 (11) The Office of Tax Appeals provided in §11-10A-1 of this code; and

115 (12) The State Athletic Commission provided in §29-5A-1 *et seq.* of this code.

116 (k) The following agencies and boards, including all of the allied, advisory, affiliated, or
117 related entities and funds associated with any agency or board, are incorporated in and
118 administered as a part of the Department of Transportation:

119 (1) Division of Highways provided in §17-2A-1 *et seq.* of this code;

120 (2) Parkways Authority provided in §17-16A-1 *et seq.* of this code;

121 (3) Division of Motor Vehicles provided in §17A-2-1 *et seq.* of this code;

122 (4) Driver's Licensing Advisory Board provided in §17B-2-1 *et seq.* of this code;

123 (5) Aeronautics Commission provided in §29-2A-1 *et seq.* of this code;

124 (6) State Rail Authority provided in §29-18-1 *et seq.* of this code; and

125 (7) Public Port Authority provided in §17-16B-1 *et seq.* of this code.

126 (l) Effective July 1, 2011, the Veterans' Council provided in §9A-1-1 *et seq.* of this code,
127 including all of the allied, advisory, affiliated, or related entities and funds associated with it, is
128 incorporated in and administered as a part of the Department of Veterans' Assistance.

129 (m) Except for powers, authority and duties that have been delegated to the secretaries
130 of the departments by the provisions of §5F-2-2 of this code, the position of administrator and the
131 powers, authority, and duties of each administrator and agency are not affected by the enactment
132 of this chapter.

133 (n) Except for powers, authority and duties that have been delegated to the secretaries of
134 the departments by the provisions of §5F-2-2 of this code, the existence, powers, authority, and
135 duties of boards and the membership, terms and qualifications of members of the boards are not
136 affected by the enactment of this chapter. All boards that are appellate bodies or are independent
137 decision makers shall not have their appellate or independent decision-making status affected by
138 the enactment of this chapter.

139 (o) Any department previously transferred to and incorporated in a department by prior
140 enactment of this section means a division of the appropriate department. Wherever reference is
141 made to any department transferred to and incorporated in a department created in §5F-1-2 of
142 this code, the reference means a division of the appropriate department and any reference to a
143 division of a department so transferred and incorporated means a section of the appropriate
144 division of the department.

145 (p) When an agency, board, or commission is transferred under a bureau or agency other
146 than a department headed by a secretary pursuant to this section, that transfer is solely for
147 purposes of administrative support and liaison with the Office of the Governor, a department
148 secretary or a bureau. Nothing in this section extends the powers of department secretaries under
149 §5F-2-2 of this code to any person other than a department secretary and nothing limits or
150 abridges the statutory powers and duties of statutory commissioners or officers pursuant to this
151 code.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 1J. THE WEST VIRGINIA MILITARY AUTHORITY ACT.

§15-1J-2. Legislative findings.

1 (a) The Legislature finds that the West Virginia National Guard is a unique entity that has
2 a dual mission for both West Virginia and the United States. In this dual capacity, the West Virginia
3 National Guard receives funds to administer programs, including the hiring of employees, that the

4 federal government, including the Department of Defense, provides to the guard in support of
5 specific activities for various federal agencies for national security and homeland security
6 purposes. It also assists with emergency and disaster planning, response, recovery and
7 resiliency. These programs fulfill specific agency purposes and necessarily require continued
8 funding by the federal government.

9 ~~Additionally,~~ (b) The Legislature further finds that the guard continues to receive federal
10 funding to develop and maintain capabilities to house, refurbish, rebuild and maintain military
11 equipment and conduct other test and operational activities to support national and homeland
12 security objectives. These activities require the guard to enter into contracts and subcontracts for
13 specialized technical services and hire persons who will be compensated, in whole or in part, with
14 federal funds. It is further determined and declared that it is necessary for the guard to develop
15 and implement a procedure for hiring and management of nonmilitary employees to support its
16 specific missions.

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

1 (a) The West Virginia Military Authority is hereby established to administer national
2 security, homeland security, and other military-related or sponsored programs and to provide a
3 coordinated effort for emergency and disaster planning, response, recovery, and resiliency
4 between government agencies, first responders, and all other entities.

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

7 (c) Funds provided by the federal government and any state funds authorized by
8 appropriation of the Legislature used as a required match to secure federal funding for programs
9 administered by the authority pursuant to this section shall be administered by the Adjutant
10 General subject to the provisions of §4-11-1 *et seq.* of this code.

11 (d) Except as otherwise prohibited by statute, the authority, as a governmental
12 instrumentality exercising public powers of the state, shall have and may exercise all powers

13 necessary or appropriate to carry out the purpose of this article, including the authority to:

14 (1) Execute cooperative agreements ~~between the guard and the federal and/or state~~
15 ~~governments~~ to effectuate the purposes of this article;

16 (2) Contract on behalf of the guard with the federal government, its instrumentalities and
17 agencies, any state, territory or the District of Columbia and its agencies and instrumentalities,
18 municipalities, foreign governments, public bodies, private corporations, partnerships,
19 associations and individuals;

20 (3) Use funds administered by the authority pursuant to subsection (c) of this section for
21 the maintenance, construction or reconstruction of capital repair and replacement items as
22 necessary and approved by the authority;

23 (4) Accept and use funds from the federal government, its instrumentalities and agencies,
24 any state, territory or the District of Columbia and its agencies and instrumentalities,
25 municipalities, foreign governments, public bodies, private corporations, partnerships,
26 associations and individuals ~~for~~ to effectuate the purposes of ~~national security, homeland security~~
27 ~~and other military-related or sponsored programs~~ this article.

28 (5) Procure insurance with state funds through BRIM covering property and other assets
29 of the authority in amounts and from insurers that BRIM determines necessary;

30 (6) Contract ~~on behalf of the guard~~ with the federal government, its instrumentalities and
31 agencies, any state, territory or the District of Columbia and its agencies and instrumentalities,
32 municipalities, foreign governments, public bodies, private corporations, partnerships,
33 associations and individuals for specialized technical services at a rate commensurate with
34 industry standards as determined by the Adjutant General to support specific activities related to
35 ~~national security, homeland security and other military-related programs~~ the purposes of this
36 article;

37 (7) Hire employees at an appropriate salary equivalent to a competitive wage rate;

38 (8) Enroll employees in PERS, PEIA and workers' compensation and unemployment

39 programs, or their equivalents: *Provided*, That the authority, through the receipt of federal and/or
40 state funds, pays the required employer contributions;

41 (9) Cooperate with economic development agencies in efforts to promote the expansion
42 of industrial, commercial and manufacturing in the state;

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

45 (11) Due to the at-will employment relationship with the authority, its employees may not
46 avail themselves of the state grievance procedure as set forth in ~~article six-a, chapter twenty-nine~~
47 §6C-2-1 et seq. of this code; and

48 (12) Have the ability to secure all other bonding, insurance or other liability protections
49 necessary for its employees to fulfill their duties and responsibilities.

50 (d) There is hereby created in the State Treasury a special revenue account designated
51 the Military Authority Fund which shall be administered by the Adjutant General. All revenues
52 received from nonfederal government entities shall be deposited into the special revenue account,
53 and may be used by the Adjutant General in accordance with the provisions of this article.

ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.

§15-5-1. Policy and purpose.

1 In view of the existing and increasing possibility of the occurrence of disasters of
2 unprecedented size and destructiveness and large-scale threats, resulting from terrorism, enemy
3 attack, sabotage or other hostile action, or from fire, flood, earthquakes or other natural or man-
4 made causes and in order to insure that preparations of this state will be adequate to deal with
5 the disasters and large-scale threats, and generally to provide for the common defense and to
6 protect the public peace, health and safety and to preserve the lives and property of the people
7 of the state, it is found and declared to be necessary: (1) To create the Division of Homeland

8 Security and Emergency Management and to authorize the creation of local and regional
9 organizations for emergency services in the political subdivisions of the state; (2) to confer upon
10 the Governor and upon the executive heads of governing bodies of the political subdivisions of
11 the state the emergency powers provided herein; (3) to provide for the rendering of mutual aid
12 among the political subdivisions of the state and with other states and to cooperate with the federal
13 government with respect to the carrying out of emergency services and homeland security
14 functions; and (4) to establish and implement comprehensive homeland security and emergency
15 management plans to deal with such disasters and large-scale threats. It is further declared to be
16 the purpose of this article and the policy of the state that all homeland security and emergency
17 management funds and functions of this state be coordinated to the maximum extent with the
18 State Resiliency Officer/Homeland Security Advisor appointed by the Governor ~~Secretary of the~~
19 ~~Department of Military Affairs and Public Safety~~ and with the comparable functions of the federal
20 government including its various departments and agencies, of other states and localities and of
21 private agencies of every type, so that the most effective preparation and use may be made of
22 the nation's and this state's manpower, resources and facilities for dealing with any disaster or
23 large-scale threat that may occur.

§15-5-2. Definitions.

1 As used in this article:

2 (a) "Emergency services" means the preparation for and the carrying out of all emergency
3 functions, other than functions for which military forces are primarily responsible, to protect,
4 respond and recover, to prevent, detect, deter and mitigate, to minimize and repair injury and
5 damage resulting from disasters or other event caused by flooding, terrorism, enemy attack,
6 sabotage or other natural or other man-made causes. These functions include, without limitation,
7 firefighting services, police services, medical and health services, communications, radiological,
8 chemical and other special weapons defense, evacuation of persons from stricken areas,
9 emergency welfare services, emergency transportation, existing or properly assigned functions

10 of plant protection, temporary restoration of public utility services and other functions related to
11 the health, safety and welfare of the citizens of this state, together with all other activities
12 necessary or incidental to the preparation for and carrying out of the foregoing functions. Disaster
13 includes the imminent threat of disaster as well as its occurrence and any power or authority
14 exercisable on account of a disaster that may be exercised during the period when there is an
15 imminent threat thereof;

16 (b) "Local organization for emergency services" means an organization created in
17 accordance with the provisions of this article by state or local authority to perform local emergency
18 services function;

19 (c) "Mobile support unit" means an organization for emergency services created in
20 accordance with the provisions of this article by state or local authority to be dispatched by the
21 Governor to supplement local organizations for emergency services in a stricken area;

22 (d) "Political subdivision" means any county or municipal corporation in this state;

23 ~~(e) "Board" means the West Virginia Disaster Recovery Board created by this article;~~

24 ~~(f)~~ (e) "Code" means the Code of West Virginia, 1931, as amended;

25 ~~(g)~~ (f) "Community facilities" means a specific work or improvement within this state or a
26 specific item of equipment or tangible personal property owned or operated by any political
27 subdivision or nonprofit corporation and used within this state to provide any essential service to
28 the general public;

29 ~~(h)~~ (g) "Disaster" means the occurrence or imminent threat of widespread or severe
30 damage, injury, or loss of life or property resulting from any natural or terrorist or man-made
31 cause, including weapons of mass destruction, fire, flood, earthquake, wind, snow, storm,
32 chemical or oil spill or other water or soil contamination, epidemic, air contamination, blight,
33 drought, infestation or other public calamity requiring emergency action;

34 ~~(i)~~ (h) "Disaster recovery activities" means activities undertaken prior to, during or following
35 a disaster to provide, or to participate in the provision of, emergency services, temporary housing,

36 residential housing, essential business activities and community facilities;

37 ~~(j)~~ (i) "Essential business activities" means a specific work or improvement within this state
38 or a specific item of equipment or tangible personal property used within this state by any person
39 to provide any essential goods or service deemed by the authority to be necessary for recovery
40 from a disaster;

41 (j) "Military Authority" means the West Virginia Military Authority, as established in §15-1J-
42 1 et seq. of this code;

43 (k) "Person" means any individual, corporation, voluntary organization or entity,
44 partnership, firm or other association, organization or entity organized or existing under the laws
45 of this or any other state or country;

46 (l) "Recovery fund" means the West Virginia Disaster Recovery Trust Fund created by this
47 article;

48 (m) "Residential housing" means a specific work or improvement within this state
49 undertaken primarily to provide dwelling accommodations, including the acquisition, construction
50 or rehabilitation of land, buildings and improvements thereto, for residential housing, including,
51 but not limited to, facilities for temporary housing and emergency housing, and such other
52 nonhousing facilities as may be incidental or appurtenant thereto; and

53 (n) "Temporary housing" means a specific work or improvement within this state
54 undertaken primarily to provide dwelling accommodations, including the acquisition, construction
55 or rehabilitation of land, buildings and improvements thereto, for temporary residential shelters or
56 housing for victims of a disaster and such other nonhousing facilities as may be incidental or
57 appurtenant thereto; and

58 ~~(o) "Secretary" means the Secretary of the West Virginia Department of Military Affairs~~
59 ~~and Public Safety~~

§15-5-3. Division of Homeland Security and Emergency Management created.

1 (a) The Office of Emergency Services is continued as the Division of Homeland Security
2 and Emergency Management within the ~~Department of Military Affairs and Public Safety~~ Adjutant
3 General's Department. All of the allied, advisory, affiliated or related entities, and funds associated
4 with the Office of Emergency Services and all its functions, personnel, and property, are
5 transferred to, incorporated in, and administered as a part of the Division of Homeland Security
6 and Emergency Management. Wherever the words "Office of Emergency Services" appear in this
7 code, they shall mean the Division of Homeland Security and Emergency Management.

8 (b) A Director of the Division of Homeland Security and Emergency Management shall be
9 appointed by the Governor, by and with the advice and consent of the Senate. The Governor shall
10 consider applicants for director who at a minimum: (1) Have at least five years managerial or
11 strategic planning experience; (2) are knowledgeable in matters relating to public safety,
12 homeland security, emergency management and emergency response; and (3) have, at a
13 minimum, a federally issued secret level security clearance or have submitted to or will submit to
14 a security clearance investigation for the purpose of obtaining, at a minimum, a federally issued
15 secret level security clearance.

16 (c) The director may employ such technical, clerical, stenographic, and other personnel,
17 fix their compensation and make expenditures within the appropriation to the division or from other
18 funds made available for the purpose of providing homeland security and emergency
19 management services to carry out the purpose of this article. Employees of the Division of
20 Homeland Security and Emergency Management shall be members of the state Civil Service
21 System and all appointments of the office, except those required by law to be exempt, shall be a
22 part of the classified service under the Civil Service System: *Provided*, That the director may
23 employ personnel that are not members of the Civil Service System for purposes provided in §15-
24 5-3(g) of this code.

25 (d) The director and other personnel of the Division of Homeland Security and Emergency
26 Management shall be provided with appropriate office space, furniture, equipment, supplies,

27 stationery, and printing in the same manner as provided for personnel of other state agencies.

28 (e) The director, subject to the direction and control of the Governor through the ~~Secretary~~
29 ~~of the Department of Military Affairs and Public Safety~~ Adjutant General, shall be the executive
30 head of the Division of Homeland Security and Emergency Management and shall be responsible
31 to the Governor and the ~~Secretary of the Department of Military Affairs and Public Safety~~ Adjutant
32 General for carrying out the program for homeland security and emergency management in this
33 state. The director, in consultation with the ~~Secretary of the Department of Military Affairs and~~
34 ~~Public Safety~~ Adjutant General, shall coordinate the activities of all organizations for homeland
35 security and emergency management within the state and maintain liaison with and cooperate
36 with homeland security, emergency management and other emergency service and civil defense
37 agencies and organizations of other states and of the federal government, and shall have
38 additional authority, duties, and responsibilities authorized by §15-5-1 *et seq.* of this code as may
39 be prescribed by the Governor or the ~~Secretary of the Department of Military Affairs and Public~~
40 ~~Safety~~ Adjutant General.

41 (f) The director shall have the power to acquire in the name of the state by purchase,
42 lease, or gift, real property and rights or easements necessary or convenient to construct thereon
43 the necessary building or buildings for housing and homeland security and emergency
44 management control center.

45 (g) The director may, for the purposes of responding to a declared state of emergency or
46 for the recovery from a declared state of emergency following the termination of the declaration,
47 employ personnel or enter into contracts and subcontracts for goods or specialized technical
48 services, subject to the following provisions:

49 (1) Employee positions shall be contingent on the receipt of the necessary federal and/or
50 state funds.

51 (2) All employees employed pursuant to this subsection shall be exempt from both the
52 classified services category and the classified exempt services category provided in §29-6-4 of

53 this code.

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

56 (4) Employees may participate in the PEIA, PERS, workers' compensation, unemployment
57 compensation programs, or their equivalents.

58 (5) The director shall set appropriate salary rates for employees equivalent to a rate
59 commensurate with industry standards.

60 (6) Contracts may be entered into pursuant to this subsection with the federal government,
61 its instrumentalities and agencies, any state, territory or the District of Columbia and its agencies
62 and instrumentalities, municipalities, foreign governments, public bodies, private corporations,
63 partnerships, associations and individuals for specialized technical services at a rate
64 commensurate with industry standards as determined by the director to support specific activities
65 related to the response to or the recovery from a declared state of emergency.

**§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 fund~~
disbursement.**

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

§15-5-4c. Powers and duties of related to the West Virginia disaster recovery board trust fund.

9 The ~~board~~ director is hereby granted, has and may exercise all powers necessary or
10 appropriate to carry out and effectuate the purposes set forth in section four-b of this article. The
11 ~~authority~~ director has the power:

12 (1) To accept appropriations, gifts, grants, bequests and devises from any source, public
13 or private, for deposit into the recovery fund, and to use or dispose of the same to provide
14 assistance to any person, political subdivision or local organization for emergency services
15 responding to or recovering from a disaster, or otherwise involved in disaster recovery activities;

16 (2) To make and execute contracts, leases, releases and other instruments necessary or
17 convenient for the exercise of its power;

18 (3) To make, and from time to time, amend and repeal bylaws for the governance of its
19 activities not inconsistent with the provisions of this article;

20 (4) To sue and be sued;

21 (5) To acquire, hold and dispose of real and personal property;

22 (6) To enter into agreements or other transactions with any federal or state agency,
23 political subdivision or person;

24 (7) To provide for the deposit of any funds or assets of the West Virginia disaster relief
25 recovery trust fund with the state Board of Investments for investment;

26 (8) To procure insurance against any loss in connection with its property in such amounts,
27 and from such insurers, as may be necessary or desirable;

28 (9) To use the recovery trust fund to pay the costs incurred by any state department or
29 agency for the purpose of obtaining property appraisals and other certifications necessary to
30 justify the involvement of the federal emergency management agency and to allow its
31 determination of a presidentially declared disaster;

32 (10) To establish, or assist in the establishment of, temporary housing and residential

33 housing by, with or for political subdivisions declared to be in a disaster area by the federal
34 emergency management agency or other agency or instrumentality of the United States or by the
35 Governor of this state;

36 (11) To enter into purchase, lease, or other arrangements with an agency of the United
37 States or this state for temporary housing or residential housing units to be occupied by disaster
38 victims and make such units available to any political subdivision or persons;

39 (12) To assist political subdivisions, local organizations for emergency services and
40 nonprofit corporations in acquiring sites necessary for temporary housing or residential housing
41 for disaster victims and in otherwise preparing the sites to receive and use temporary housing or
42 residential housing units, including payment of transportation charges, by advancing or lending
43 funds available to the ~~board~~ Division of Homeland Security and Emergency Management from
44 the recovery fund;

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

50 (14) To make or participate in the making of insured or uninsured construction and
51 permanent loans or grants for temporary housing or residential housing, community facilities and
52 essential business activities: *Provided*, That no such loan or grant shall be made except upon a
53 written finding by the ~~board~~ director that the loan or grant and the manner in which it will be
54 provided constitute a disaster recovery activity and that the loan or grant is not otherwise
55 available, wholly or in part, from a private or public lender upon reasonably equivalent terms and
56 conditions; and

57 (15) Do all acts necessary and proper to carry out the powers granted to the ~~board~~ director
58 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 proportionate
4 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 way
8 of gift, grant or loan, for purposes relating to homeland security or emergency services, the state,
9 after consultation and in coordination with the ~~Secretary~~ State Resiliency Officer/Homeland
10 Security Advisor and acting through the Governor, or a political subdivision after consultation and
11 in coordination with the ~~Secretary~~ State Resiliency Officer/Homeland Security Advisor and acting
12 with the consent of the Governor and through its executive officer or governing body, may accept
13 the offer. Upon acceptance, the Governor of the state or executive officer or governing body of
14 the political subdivision may authorize any officer of the state or of the political subdivision, as the
15 case may be, to receive services, equipment, supplies, materials or funds on behalf of the state
16 or the political subdivision and subject to the terms of the offer and the rules and regulations, if
17 any, of the agency making the 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 loan,
20 for purposes relating to homeland security or emergency services, the state, after consultation
21 and in coordination with the ~~Secretary~~ State Resiliency Officer/Homeland Security Advisor and
22 acting through the Governor, or the political subdivision after consultation and in coordination with
23 the ~~Secretary~~ State Resiliency Officer/Homeland Security Advisor and acting through its executive
24 officer or governing body, may accept the offer. Upon acceptance, the Governor of the state or
25 executive officer or governing body of the political subdivision may authorize any officer of the

26 state or of the political subdivision, as the case may be, to receive services, equipment, supplies,
27 materials or funds on behalf of the state or the political subdivision and subject to the terms of the
28 offer.

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

§15-5-24. Disaster recovery trust fund; use 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 disaster~~
3 ~~recovery board~~ Director of the Division of Homeland Security and Emergency Management. The
4 recovery fund shall consist of (i) any appropriations, grants, gifts, contributions or revenues
5 received by the recovery fund from any source, public or private, and (ii) all income earned on
6 moneys, properties and assets held in the recovery fund. When any funds are received by the
7 ~~board~~ director from any source, they shall be paid into the recovery fund, and shall be disbursed
8 and otherwise managed in the manner set forth in this article. The recovery fund shall be treated
9 by the Auditor and treasurer as a special revenue fund and not as part of the general revenues of
10 the state.

11 (b) All moneys, properties and assets acquired by the State of West Virginia in the disaster
12 ~~recovery board~~ fund shall be held by it in trust for the purposes of carrying out its powers and
13 duties, and shall be used and reused in accordance with the purposes and provisions of this
14 article. Such moneys, properties and assets shall at no time be commingled with other public
15 funds. Disbursements from the recovery fund shall be made only upon the written requisition of
16 the ~~chairman accompanied by a certified resolution of the board~~ Governor or the State Resiliency

17 Officer/Homeland Security Advisor, on behalf of and authorized by the Governor. If no need exists
 18 for immediate use or disbursement, moneys, properties and assets in the recovery fund shall be
 19 invested or reinvested by the ~~board~~ director as provided in this article.

**§15-5-25. Prohibition on funds inuring to the benefit of or being distributable to members,
 officers or private persons.**

1 [Repealed]

§15-5-26. Tax exemption.

1 The ~~board~~ director shall not be required to pay any taxes and assessments to the state or
 2 any political subdivision of the state upon any of its moneys, properties or assets or upon its
 3 obligations or other evidences of indebtedness pursuant to the provisions of this article, or upon
 4 any moneys, funds, revenues or other income held or received by into the West Virginia disaster
 5 recovery ~~board~~ fund.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 31. STATE RESILIENCY AND FLOOD PROTECTION PLAN ACT.

**§29-31-2. ~~State Resiliency Office~~ of the State Resiliency Officer/Homeland Security
 Advisor.**

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 the
 4 impact of future disasters, respond quickly to save lives, protect property and the environment,
 5 meet basic human needs, and provide economic growth and resilience in the aftermath of an
 6 incident. Therefore, the ~~The State Resiliency Office~~ of the State Resiliency Officer/Homeland
 7 Security Advisor is hereby created. The office shall be organized within the ~~Development Office~~
 8 ~~in the Department of Commerce~~ Adjutant General's Department, and serve as the recipient of
 9 disaster recovery and resiliency funds, excluding federal Stafford Act funds, and the coordinating

10 agency of recovery and resiliency efforts, including matching funds for other disaster recovery
11 programs, excluding those funds and efforts under the direct control of the State Coordinating
12 Officer designated by the Governor for a particular event. ~~The State Resiliency Office Board is~~
13 ~~also established and shall consist of the following eight members: the Secretary of the Department~~
14 ~~of Commerce or his or her designee; The Director of the Division of Natural Resources or his or~~
15 ~~her designee; the Secretary of the Department of Environmental Protection or his or her designee;~~
16 ~~the Executive Director of the State Conservation Agency or his or her designee; the Secretary of~~
17 ~~the Department of Military Affairs and Public Safety or his or her designee; the Secretary of~~
18 ~~Transportation or his or her designee; the Adjutant General of the West Virginia National Guard~~
19 ~~or his or her designee; and the Director of the Division of Homeland Security and Emergency~~
20 ~~Management within the Department of Military Affairs and Public Safety or his or her designee.~~

21 ~~(b) The Secretary of the Department of Commerce shall be the chair of the State~~
22 ~~Resiliency Office Board. In the absence of the chair, any member designated by the members~~
23 ~~present may act as chair.~~

24 ~~(c) The board shall meet no less than once each calendar quarter at the time and place~~
25 ~~designated by the chair. All decisions of the board shall be decided by a majority vote of the~~
26 ~~members.~~

27 ~~(d) The chair shall provide adequate staff from their respective office, to ensure the~~
28 ~~meetings of the board are properly noticed, meetings of the board are facilitated, board meeting~~
29 ~~minutes are taken, records and correspondence kept and that reports of the board are produced~~
30 ~~timely~~

31 (b) The Governor shall appoint the State Resiliency Officer/Homeland Security Advisor,
32 who shall be the executive head of the office and shall be responsible to the Governor for carrying
33 out the duties of the office. The Governor shall consider applicants for the position who at a
34 minimum: (1) Have at least five years managerial or strategic planning experience; (2) are
35 knowledgeable in matters relating to public safety, homeland security, emergency management

36 and emergency response; and (3) have at a minimum, a federally issued secret level security
 37 clearance or have submitted to or will submit to a security clearance investigation for the purpose
 38 of obtaining, at a minimum, a federally issued secret level security clearance. The State Resiliency
 39 Officer/Homeland Security Advisor shall be vested with the authority and duties prescribed to the
 40 office within this article.

**§29-31-3. Authority of ~~State Resiliency Office; authority of board~~ State Resiliency
Officer/Homeland Security Advisor.**

1 The State Resiliency ~~Office, through its board may~~ Officer/Homeland Security Advisor will
 2 implement the state's homeland security mission and serve as the primary representative of the
 3 Governor. The State Resiliency Officer/Homeland Security Advisor will act on behalf of the
 4 Governor in the event of a disaster or an emergency. All major homeland security functions will
 5 flow through the homeland security advisor, who has the authority to make critical decisions
 6 regarding policies, procedures, and communications on behalf of the Governor. The State
 7 Resiliency Officer/Homeland Security Advisor will assist and advise the Governor on all homeland
 8 security issues and serve as a liaison between the Governor's office, state homeland security
 9 organizations, the Department of Homeland Security, and all other parties, whether state, federal,
 10 public or private to further the purposes of this article. The State Resiliency Officer/Homeland
 11 Security Advisor will:

12 (1) Serve as coordinator of all economic and community resiliency planning and
 13 implementation efforts, including, but not limited to, flood protection programs and activities in the
 14 state;

15 (2) ~~Annually~~ Coordinate annual review of the state flood protection plan and update the
 16 plan no less than biannually;

17 (3) Recommend legislation to reduce or mitigate flood damage;

18 (4) Report to the Joint Legislative Committee on Flooding at least quarterly;

19 (5) Catalog, maintain and monitor a listing of current and proposed capital expenditures

- 20 to reduce or mitigate flood damage or other resiliency efforts;
- 21 (6) Coordinate planning of flood projects with federal agencies;
- 22 (7) Improve professional management of flood plains;
- 23 (8) Provide education and outreach on flooding issues to the citizens of this state;
- 24 (9) Establish a single web site integrating all agency flood information;
- 25 (10) Monitor federal funds and initiatives that become available for disaster recovery and
- 26 economic and community resiliency and direct expenditure on behalf of the Governor;
- 27 (11) Pursue additional funds and resources to assist not only with long-term recovery
- 28 efforts but also long-term community and state wide resiliency efforts;
- 29 (12) Coordinate, integrate and expand planning efforts in the state for hazard mitigation,
- 30 long-term disaster recovery and economic diversification;
- 31 (13) Coordinate long-term disaster recovery efforts in response to disasters as they 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; and
- 36 (16) Take all other actions necessary and proper to effectuate the purposes of this article.
- 37 (b) The office shall have any other additional authority, duties, and responsibilities as
- 38 prescribed by the Governor to effectuate the purposes of this article.

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

- 1 (a) ~~The chair of the board of the State Resiliency Office~~ Officer/Homeland Security Advisor
- 2 shall report, at a minimum of quarterly, to the Joint Legislative Committee on Flooding, created
- 3 pursuant to §4-15-1 *et seq.* of this code, in sufficient detail for the committee to be aware of the
- 4 activities of the ~~board~~ office to assure progress toward reducing and mitigating flood damage
- 5 within this state while respecting and complying with the Takings Clause of the United States
- 6 Constitution, the West Virginia Constitution, and related precedential court opinions, and to

- 7 develop legislative recommendations.
- 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 the~~
- 10 ~~activities of the board for the previous year~~

NOTE: The purpose of this bill is to reorganize state agencies involved in emergency and disaster planning, response, recovery, and resiliency in order to more efficiently and effectively perform such duties. The Division of Homeland Security and Emergency Management and the State Resiliency Office are reorganized within the Adjutant General's Department.

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