

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4401

BY DELEGATE D. JEFFRIES

[BY REQUEST OF THE JOINT COMMITTEE ON FLOODING]

[Introduced January 17, 2020; Referred to the
Committee on Veterans' Affairs and Homeland
Security then Government Organization]

1 A BILL to repeal §15-5-4 and §15-5-27 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §5F-2-2 of said code; to amend and reenact §15-1A-3; §15-5-4b, §15-5-4c,
3 §15-5-13, §15-5-24; and §15-5-26 of said code; to amend said code by adding thereto a
4 new section, designated §15-5-29; to amend and reenact §19-1-4 of said code; to amend
5 and reenact §19-21A-4 of said code; to amend and reenact §20-1-7 of said code; to amend
6 and reenact §22-1-6 of said code; to amend and reenact §29-31-2, §29-31-3, and §29-31-
7 4 of said code; to amend said code by adding thereto a new section, designated §29-31-
8 5; and to amend and reenact §33-2-23 of said code, all related to the State Resiliency
9 Office and State Resiliency Officer; authorizing department heads to work with the State
10 Resiliency Office; requiring Adjutant General to cooperate with the State Resiliency Office;
11 eliminating the West Virginia Disaster Recovery Board; requiring the State Resiliency
12 Officer's approval to auditor for disbursements from WV Disaster Recovery Fund;
13 establishing powers of State Resiliency Office with respect to fund; providing authority of
14 State Resiliency Office to accept assistance of the federal government related to
15 emergency response; establishing the State Resiliency Officer as the administrator of the
16 disaster recovery trust fund; providing authority of State Resiliency Office to disburse
17 funds; eliminating annual reporting requirement of fund; requiring Director of Division of
18 Homeland Security and Emergency Management to cooperate with the State Resiliency
19 Office; requiring the Agriculture Commissioner to cooperate with the State Resiliency
20 Office; requiring the State Conservation Commission to cooperate with the State
21 Resiliency Office; authorizing the Secretary of the Department of Environmental Protection
22 to cooperate with the State Resiliency Office; designating the State Resiliency Office as
23 the authority to provide and coordinate emergency relief efforts; establishing the State
24 Resiliency Office as within the Office of the Governor; modifying requirements for board
25 members; establishing additional duties for the board; providing for the appointment,
26 duties, and requirements for the position of State Resiliency Officer; providing that the

27 State Resiliency Officer will act on behalf of the Governor in emergency situations;
 28 establishing the authority of the State Resiliency Office and State Resiliency Officer;
 29 establishing the State Resiliency Officer to report to the Joint Committee on Flooding;
 30 establishing the power of the State Resiliency Officer over employees of the office;
 31 creating and establishing state office of National Flood Control Program; and providing for
 32 a coordinator to administer the program.

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-2-2. Power and authority of secretary of each department.

1 (a) Notwithstanding any other provision of this code to the contrary, the secretary of each
 2 department shall have plenary power and authority within and for the department to:

3 (1) Employ and discharge within the office of the secretary employees as may be
 4 necessary to carry out the functions of the secretary, which employees shall serve at the will and
 5 pleasure of the secretary;

6 (2) Cause the various agencies and boards to be operated effectively, efficiently and
 7 economically and develop goals, objectives, policies and plans that are necessary or desirable
 8 for the effective, efficient and economical operation of the department;

9 (3) Eliminate or consolidate positions, other than positions of administrators or positions
 10 of board members and name a person to fill more than one position;

11 (4) Transfer permanent state employees between departments in accordance with the
 12 provisions of section seven of this article;

13 (5) Delegate, assign, transfer or combine responsibilities or duties to or among employees,
 14 other than administrators or board members;

15 (6) Reorganize internal functions or operations;

16 (7) Formulate comprehensive budgets for consideration by the Governor and transfer
17 within the department funds appropriated to the various agencies of the department which are not
18 expended due to cost savings resulting from the implementation of the provisions of this chapter:
19 *Provided*, That no more than 25 percent of the funds appropriated to any one agency or board
20 may be transferred to other agencies or boards within the department: *Provided, however*, That
21 no funds may be transferred from a special revenue account, dedicated account, capital
22 expenditure account or any other account or funds specifically exempted by the Legislature from
23 transfer, except that the use of appropriations from the state Road Fund transferred to the office
24 of the Secretary of the Department of Transportation is not a use other than the purpose for which
25 the funds were dedicated and is permitted: *Provided further*, That if the Legislature by subsequent
26 enactment consolidates agencies, boards or functions, the appropriate secretary may transfer the
27 funds formerly appropriated to the agency, board or function in order to implement consolidation.
28 The authority to transfer funds under this section shall expire on June 30, 2010;

29 (8) Enter into contracts or agreements requiring the expenditure of public funds and
30 authorize the expenditure or obligation of public funds as authorized by law: *Provided*, That the
31 powers granted to the secretary to enter into contracts or agreements and to make expenditures
32 or obligations of public funds under this provision shall not exceed or be interpreted as authority
33 to exceed the powers granted by the Legislature to the various commissioners, directors or board
34 members of the various departments, agencies or boards that comprise and are incorporated into
35 each secretary's department under this chapter;

36 (9) Acquire by lease or purchase property of whatever kind or character and convey or
37 dispose of any property of whatever kind or character as authorized by law: *Provided*, That the
38 powers granted to the secretary to lease, purchase, convey or dispose of such property shall be
39 exercised in accordance with §5A-3-1 *et seq.*, §5A-10-1 *et seq.*, and §5A-3-11 *et seq.* of this code:
40 *Provided, however*, That the powers granted to the secretary to lease, purchase, convey or

41 dispose of such property shall not exceed or be interpreted as authority to exceed the powers
42 granted by the Legislature to the various commissioners, directors or board members of the
43 various departments, agencies or boards that comprise and are incorporated into each secretary's
44 department under this chapter;

45 (10) Conduct internal audits;

46 (11) Supervise internal management;

47 (12) Promulgate rules, as defined in §29A-1-2 of this code, to implement and make
48 effective the powers, authority and duties granted and imposed by the provisions of this chapter
49 in accordance with the provisions of chapter 29A of this code;

50 (13) Grant or withhold written consent to the proposal of any rule, as defined in §29A-1-2
51 of this code, by any administrator, agency or board within the department. Without written
52 consent, no proposal for a rule shall have any force or effect;

53 (14) Delegate to administrators the duties of the secretary as the secretary may deem
54 appropriate, from time to time, to facilitate execution of the powers, authority and duties delegated
55 to the secretary; and

56 (15) Take any other action involving or relating to internal management not otherwise
57 prohibited by law.

58 (b) The secretaries of the departments hereby created shall engage in a comprehensive
59 review of the practices, policies and operations of the agencies and boards within their
60 departments to determine the feasibility of cost reductions and increased efficiency which may be
61 achieved therein, including, but not limited to, the following:

62 (1) The elimination, reduction and restriction of the state's vehicle or other transportation
63 fleet;

64 (2) The elimination, reduction and restriction of state government publications, including
65 annual reports, informational materials and promotional materials;

66 (3) The termination or rectification of terms contained in lease agreements between the

67 state and private sector for offices, equipment and services;

68 (4) The adoption of appropriate systems for accounting, including consideration of an
69 accrual basis financial accounting and reporting system;

70 (5) The adoption of revised procurement practices to facilitate cost-effective purchasing
71 procedures, including consideration of means by which domestic businesses may be assisted to
72 compete for state government purchases; and

73 (6) The computerization of the functions of the state agencies and boards.

74 (c) Notwithstanding the provisions of subsections (a) and (b) of this section, none of the
75 powers granted to the secretaries herein shall be exercised by the secretary if to do so would
76 violate or be inconsistent with the provisions of any federal law or regulation, any federal-state
77 program or federally delegated program or jeopardize the approval, existence or funding of any
78 program.

79 (d) The layoff and recall rights of employees within the classified service of the state as
80 provided in §29-6-10(5) and §29-6-10(6) of this code shall be limited to the organizational unit
81 within the agency or board and within the occupational group established by the classification and
82 compensation plan for the classified service of the agency or board in which the employee was
83 employed prior to the agency or board's transfer or incorporation into the department: *Provided,*
84 That the employee shall possess the qualifications established for the job class. The duration of
85 recall rights provided in this subsection shall be limited to two years or the length of tenure,
86 whichever is less. Except as provided in this subsection, nothing contained in this section shall
87 be construed to abridge the rights of employees within the classified service of the state as
88 provided in §29-6-10 and §29-6-10a of this code.

89 (e) Notwithstanding any other provision of this code to the contrary, the secretary of each
90 department with authority over programs which have an impact on the delivery of health care
91 services in the state or are payors for health care services or are payors for prescription drugs,
92 including, but not limited to, the Public Employees Insurance Agency, the Department of Health

93 and Human Resources, the Bureau of Senior Services, the Children’s Health Insurance Program,
94 the Health Care Authority, the Office of the Insurance Commissioner, the Division of Corrections,
95 the Division of Juvenile Services, the Regional Jail and Correctional Facility Authority, state
96 colleges and universities, public hospitals, state or local institutions including nursing homes and
97 veterans’ homes, the Division of Rehabilitation Services, public health departments, the Bureau
98 for Medical Services and other programs, which have an impact on the delivery of health care
99 services or are payors for health care services or are payors for prescription drugs, in West
100 Virginia shall cooperate with the Governor’s Office of Health Enhancement and Lifestyle Planning
101 established pursuant to §16-29h-1 *et seq.* for the purpose of improving the health care delivery
102 services in West Virginia for any program over which they have authority.

103 (f) Notwithstanding any other provision of this code to the contrary, the secretary of each
104 department shall cooperate with the State Resiliency Office to the fullest extent practicable to
105 assist that office in fulfilling its duties.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 1A. ADJUTANT GENERAL.

§15-1A-3. Duties.

1 (a) The Adjutant General shall be chief of staff to the Governor and commanding general
2 of the organized militia. He or she shall direct the planning and employment of the military forces
3 of the state in carrying out their state mission, establish unified command of state forces whenever
4 jointly engaged, coordinate the military affairs with the civil defense of the state and organize and
5 coordinate the activities of all civil agencies including local and state police in event of declaration
6 of a limited emergency by the Governor pursuant to article one-d of this chapter. In time of
7 emergency or disaster, the Adjutant General shall coordinate his or her activities with those of the
8 Office of Emergency Services provided for by article five of this chapter. He or she shall be
9 custodian of all military records of the State and shall keep the same indexed and available for

10 ready reference. He or she shall keep an itemized account of all moneys received and dispensed
11 from all sources and shall make an annual report to the Governor on the condition of the organized
12 militia, receipts and expenditures and such other matters relating to the military forces of the State
13 and the Adjutant General's department as he or she shall deem expedient.

14 (b) The Adjutant General shall be responsible for the organization, administration, training
15 and supply of the organized militia and shall cause to be procured, prepared and issued to the
16 organizations of the organized militia all necessary books and blanks for reports, records, returns
17 and general administration, and shall, at the expense of the state, cause the military laws, military
18 code and rules and regulations in force to be printed, bound in proper form and distributed, one
19 copy to each commissioned officer, and one each to all the circuit, intermediate and criminal court
20 judges, sheriffs and justices of the peace in the state requiring them and shall procure and supply
21 all necessary textbooks of drill and instruction. He or she shall keep in his or her office an accurate
22 account of all state and United States property issued to the state. He or she shall keep on file in
23 his or her office all official bonds required by this chapter, the reports and returns of troops and
24 military forces of the state and all other writings and papers which are required to be transmitted
25 to and preserved at the general headquarters of the organized militia.

26 (c) The Adjutant General shall keep records of all service personnel from the state of West
27 Virginia, commissioned or enlisted, in any of the wars of the United States and of individual claims
28 of citizens of West Virginia for service rendered in such wars. He or she shall assist all persons
29 residing in this state having claims against the United States for pension, bounty or back pay or
30 such claims as have arisen out of, or by reason of, service in any of said wars. To this end he or
31 she shall cooperate with the agents or attorneys of such claimants, furnish to claimants only all
32 necessary certificates or certified abstracts from, or copies of, records or documents in his or her
33 office and shall seek in all practicable ways to secure speedy and just action in all claims now
34 pending or which may hereafter be filed: *Provided*, That any and all of the above services shall
35 be rendered without charge to the claimant. He or she shall establish and maintain as a part of

36 his or her office a bureau of records of the services of the West Virginia troops during such wars
 37 and shall keep arranged in proper and convenient form all records and papers pertaining thereto.

38 (d) Notwithstanding any other provision of this code to the contrary, the adjutant general
 39 shall cooperate with the State Resiliency Office to the fullest extent practicable to assist that office
 40 in fulfilling its duties.

ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT

§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~~ Trust Fund disbursement.

1 Upon the proclamation of the existence of a state of emergency or state of preparedness
 2 under the provisions of §15-5-6 of this code, ~~The board~~ the State Resiliency Officer, shall have
 3 the power ~~upon its own determination that a disaster has occurred or is about to occur in this state~~
 4 to disburse funds from the disaster relief recovery trust fund created pursuant to §15-5-24 of this
 5 code to any person, political subdivision, or local organization for emergency services in such
 6 amounts and in such manner, and to take such other actions, as the ~~board~~ State Resiliency Officer
 7 may determine is necessary or appropriate in order to provide assistance to any person, political
 8 subdivision, or local organization for emergency services responding to or recovering from the
 9 disaster, or otherwise involved in disaster recovery activities: Provided, That except as provided
 10 hereafter in this section, requisitions for payment shall not be made or authorized for payment by
 11 the Auditor without the express approval of the State Resiliency Officer, except that the State
 12 Resiliency Officer's approval shall be deemed to be made for the initial disbursement to cover the
 13 first 30 days of disaster response, and: *Provided, however,* That all subsequent disbursements
 14 arising out of the events surrounding the state of emergency or preparedness giving rise to the
 15 relevant disbursements shall require the express approval of the State Resiliency Officer, which

16 approval shall not be unduly withheld or delayed.

**§15-5-4c. Powers and duties of related to the West Virginia Disaster Recovery board Trust
Fund.**

1 The ~~board~~ State Resiliency Officer is hereby granted, has and may exercise all powers
2 necessary or appropriate to carry out and effectuate the purposes set forth in §15-5-4b of this
3 ~~article code.~~ The ~~authority~~ State Resiliency Officer has the power:

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

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

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

12 (4) To sue and be sued;

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

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

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

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

20 (9) To use the recovery trust fund to pay the costs incurred by any state department or
21 agency for the purpose of obtaining property appraisals and other certifications necessary to
22 justify the involvement of the Federal Emergency Management Agency and to allow its
23 determination of a presidentially declared disaster;

24 (10) To establish, or assist in the establishment of, temporary housing and residential
25 housing by, with or for political subdivisions declared to be in a disaster area by the Federal
26 Emergency Management Agency or other agency or instrumentality of the United States or by
27 the Governor of this state;

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

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

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

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

50 (15) Do all acts necessary and proper to carry out the powers granted to the ~~board~~ State
51 Resiliency Office. ~~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 and acting
10 through the Governor, or a political subdivision after consultation and in coordination with the
11 ~~Secretary~~ State Resiliency Officer and acting with the consent of the Governor and through its
12 executive officer or governing body, may accept the offer. Upon acceptance, the Governor of the
13 state or executive officer or governing body of the political subdivision may authorize any officer
14 of the State or of the political subdivision, as the case may be, to receive services, equipment,
15 supplies, materials or funds on behalf of the state or the political subdivision and subject to the
16 terms of the offer and the rules and regulations, if any, of the agency making the offer.

17 (c) Whenever any person, firm, or corporation shall offer to the State or to any political
18 subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or
19 loan, for purposes relating to homeland security or emergency services, the State, after
20 consultation and in coordination with the ~~Secretary~~ State Resiliency Officer and acting through
21 the Governor, or the political subdivision after consultation and in coordination with the ~~Secretary~~
22 State Resiliency Officer and acting through its executive officer or governing body, may accept
23 the offer. Upon acceptance, the Governor of the State or executive officer or governing body of

24 the political subdivision may authorize any officer of the State or of the political subdivision, as
 25 the case may be, to receive services, equipment, supplies, materials, or funds on behalf of the
 26 State or the political subdivision and subject to the terms of the offer.

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

§15-5-24. Disaster Recovery Trust Fund; ~~use~~ disbursement 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~~ State Resiliency Officer. The recovery fund shall consist of: (i) Any appropriations,
 4 grants, gifts, contributions, or revenues received by the recovery fund from any source, public or
 5 private; and (ii) all income earned on moneys, properties, and assets held in the recovery fund.
 6 When any funds are received by the ~~board~~ State Resiliency Officer from any source, they shall
 7 be paid into the recovery fund, and shall be disbursed and otherwise managed in the manner set
 8 forth in this article. The recovery fund shall be treated by the Auditor and Treasurer as a special
 9 revenue fund and not as part of the general revenues of the state.

10 (b) All moneys, properties, and assets acquired by the State of West Virginia in the disaster
 11 ~~recovery board~~ fund shall be held by it in trust for the purposes of carrying out its powers and
 12 duties; and shall be used and reused in accordance with the purposes and provisions of this
 13 article. Such moneys, properties, and assets shall at no time be commingled with other public
 14 funds. Disbursements from the recovery fund shall be made only upon the written requisition of
 15 the ~~chairman accompanied by a certified resolution of the board~~ Governor, the State Resiliency
 16 Officer, on behalf of and authorized by the Governor, or as set forth in §15-5-4b of this code. If no

17 need exists for immediate use or disbursement, moneys, properties, and assets in the recovery
 18 fund shall be invested or reinvested by the ~~board~~ State Resiliency Officer as provided in this
 19 article.

§15-5-26. Tax exemption.

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

§15-5-27. Annual report

1 [Repealed]

§15-5-29. Cooperation with State Resiliency Office.

1 Notwithstanding any other provision of this code to the contrary, the Director of the Division
 2 of Homeland Security and Emergency Management shall cooperate with the State Resiliency
 3 Office to the fullest extent practicable to assist that office in fulfilling its duties.

CHAPTER 19. AGRICULTURE.

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-4. Duties of commissioner.

1 The Commissioner of Agriculture shall perform the following duties:

2 (a) Devise means of advancing the agricultural interests of the state and, in the
 3 performance of such duty, he or she shall have authority to call upon any state department, or
 4 officer of the state or county, to cooperate in promoting the agricultural interests of the state. It
 5 shall be the duty of any such department, or officer, upon request of the commissioner to render
 6 the assistance desired;

7 (b) Promote and encourage the organization of such societies and associations as have

8 for their object the improvement and development of the state's agricultural, horticultural and
9 kindred interests, especially in production, processing for market and distribution;

10 (c) Conduct cooperative work with the United States Department of Agriculture in
11 inspecting and determining the grade and condition of farm produce at collecting centers,
12 receiving centers and shipping points;

13 (d) Induce the investment of capital in, and immigration into, this state by the dissemination
14 of information relative to the soil, climate, health, natural resources, market opportunities and
15 advantages of the state;

16 (e) Investigate and report upon the kinds, conditions and extent of the mineral products of
17 the state and their value;

18 (f) Take charge of the museum of the Department of Agriculture, collect, preserve and
19 exhibit therein specimens of agricultural, horticultural and kindred products, products of the
20 forests, minerals, flora and fauna of the state;

21 (g) Publish and distribute, from time to time, such reports and bulletins concerning
22 agriculture, horticulture and kindred subjects as may be of value to the farmers of the state and,
23 as conditions may demand, publish a handbook giving the resources of the several counties of
24 the state, the varieties of soil and products, both mineral and vegetable, and the adaptability of
25 the different sections of the state to the different branches of agriculture, horticulture and kindred
26 interests;

27 (h) Submit a biennial report to the Governor and Legislature containing such information
28 as to the operations of the department as may be helpful to the agricultural interests of the state,
29 together with an itemized statement of all receipts and disbursements during the biennial period
30 covered thereby and giving the name of every person employed during such period, the time
31 employed and the amount paid each employee;

32 (i) Perform such other duties and exercise such other powers as are provided in this
33 chapter and by general law;

34 (j) Enter into an agreement with the Secretary of the Department of Veterans' Assistance
 35 to transfer without consideration all or part of the approximately 17 acres of Department of
 36 Agriculture property in Beckley, West Virginia, located adjacent to the Jackie Withrow Hospital
 37 which was formerly known as Pinecrest Hospital, for construction of a veterans skilled nursing
 38 facility; and

39 (k) Cooperate with the State Resiliency Office to the fullest extent practicable to assist that
 40 office in fulfilling its duties; and

41 ~~(k)~~ (l) Propose rules, including regulatory standards, for legislative approval in accordance
 42 with the provisions of §29A-3-1 *et seq.* of this code for the purpose of carrying out the
 43 requirements of this chapter.

ARTICLE 21A. CONSERVATION DISTRICTS.

§19-21A-4. State Conservation Committee; continuation.

1 (a) The State Conservation Committee is continued. It serves as an agency of the State
 2 and is to perform the functions conferred upon it in this article. The committee consists of the
 3 following 10 members:

- 4 (1) Four citizen members;
- 5 (2) The following ex officio members or his or her designee:
 - 6 (A) The director of the state Cooperative Extension Service;
 - 7 (B) The director of the State Agricultural and Forestry Experiment Station;
 - 8 (C) The Secretary of the Department of Environmental Protection;
 - 9 (D) The State Commissioner of Agriculture, who is the chairperson of the committee;
 - 10 (E) The director of the Division of Forestry; and
 - 11 (F) The president of the West Virginia Association of Conservation Districts.

12 (b) The Governor shall appoint, by and with the consent of the Senate, the four citizen
 13 members. Members shall be appointed for four-year terms, which are staggered in accordance
 14 with the initial appointments under prior enactment of this section. In the event of a vacancy, the

15 appointment is for the unexpired term.

16 (c) The committee may invite the Secretary of Agriculture of the United States of America
17 to appoint one person to serve with the committee as an advisory member.

18 (d) The committee shall keep a record of its official actions, shall adopt a seal, which shall
19 be judicially noticed, and may perform those acts, hold public hearings, and adopt or propose for
20 legislative approval rules necessary for the execution of its functions under this article.

21 (e) The State Conservation Committee may employ an administrative officer, technical
22 experts and other agents and employees, permanent and temporary, as it requires. The
23 administrative officer and support staff shall be known as the West Virginia Conservation Agency.
24 The committee shall determine their qualifications, duties, and compensation. The committee may
25 call upon the Attorney General of the state for legal services it requires. It may delegate to its
26 chairperson, to one or more of its members, or to one or more agents or employees powers and
27 duties it considers proper. The committee may secure necessary and suitable office
28 accommodations and the necessary supplies and equipment. Upon request of the committee, for
29 the purpose of carrying out any of its functions, the supervising officer of any state agency or of
30 any state institution of learning shall, insofar as may be possible, under available appropriations
31 and having due regard to the needs of the agency to which the request is directed, assign or detail
32 to the committee members of the staff or personnel of the agency or institution of learning and
33 make special reports, surveys or studies required by the committee.

34 (f) A member of the committee holds office so long as he or she retains the office by virtue
35 of which he or she is serving on the committee. A majority of the committee is a quorum and the
36 concurrence of a majority in any matter within their duties is required for its determination. The
37 chairperson and members of the committee may receive no compensation for their services on
38 the committee, but are entitled to reimbursement of expenses, including traveling expenses
39 necessarily incurred in the discharge of their duties on the committee. The committee shall:

40 (1) Require the execution of surety bonds for all employees and officers who are entrusted

41 with funds or property;

42 (2) Provide for the keeping of a full and accurate public record of all proceedings and of
43 all resolutions, rules and orders issued or adopted; and

44 (3) Provide for an annual audit of the accounts of receipts and disbursements.

45 (g) In addition to other duties and powers conferred upon the State Conservation
46 Committee, it may:

47 (1) Offer appropriate assistance to the supervisors of conservation districts, organized as
48 provided in this article, in the carrying out of any of their powers and programs;

49 (2) Keep the supervisors of each of the several districts, organized under the provisions
50 of this article, informed of the activities and experience of all other districts organized under this
51 article and facilitate an interchange of advice and experience between the districts and
52 cooperation between them;

53 (3) Coordinate the programs of the several conservation districts so far as this may be
54 done by advice and consultation;

55 (4) Contract for services directly related to natural disaster recovery and stream restoration
56 related to flooding, on an as needed basis;

57 (5) Comply with provisions of present and future federal aid statutes and regulations,
58 including execution of contracts or agreements with, and cooperation in, programs of the United
59 States government and any of its proper departments, bureaus, or agencies relating to natural
60 disaster response, natural disaster recovery, or stream restoration related to flooding;

61 (6) Secure the cooperation and assistance of the United States and any of its agencies
62 and of agencies of this state in the work of the districts;

63 (7) Disseminate information throughout the state concerning the activities and programs
64 of the conservation districts and encourage the formation of the districts in areas where their
65 organization is desirable;

66 (8) Administer a conservation grant program that provides financial assistance to

67 conservation districts and others to promote approved conservation projects;

68 (9) Accept and receive donations, gifts, contributions, grants and appropriations in money,
69 services, materials or otherwise from the United States or any of its agencies, from the State of
70 West Virginia, or from other sources and use or expend the money, services, materials or other
71 contributions in carrying out the policy and provisions of this article, including the right to allocate
72 the money, services or materials in part to the various conservation districts created by this article
73 in order to assist them in carrying on their operations; and

74 (10) Obtain options upon and acquire by purchase, exchange, lease, gift, grant, bequest,
75 devise or otherwise any property, real or personal, or rights or interests in the property; maintain,
76 administer, operate and improve any properties acquired; receive and retain income from the
77 property and to expend the income as required for operation, maintenance, administration or
78 improvement of the properties or in otherwise carrying out the purposes and provisions of this
79 article; and sell, lease or otherwise dispose of any of its property or interests in the property in
80 furtherance of the purposes and the provisions of this article. Money received from the sale of
81 land acquired in the small watershed program shall be deposited in the special account of the
82 State Conservation Committee and expended as provided in this article.

83 (11) To promulgate emergency and legislative rules to effectuate the provisions of this
84 article as amended and reenacted by the Legislature during the 2018 regular session of the
85 Legislature.

86 (12) Upon a Governor's proclamation declaring a state of emergency or federal disaster
87 declaration, the state committee, its employees or agents may enter any water of the state for the
88 purpose of removing debris and other obstruction which impede water flow and present additional
89 flood hazards. The agency shall make reasonable efforts to secure the permission of the
90 landowner before entering any private property in connection with these removal activities. The
91 exercise of this limited authority does not constitute taking of private property or trespass. This
92 authority shall continue for the duration of the Governor's proclamation or the federal disaster

93 declaration.

94 (13) Cooperate with the State Resiliency Office to the fullest extent practicable to assist
95 that office in fulfilling its duties.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-7. Additional powers, duties and services of director.

1 In addition to all other powers, duties and responsibilities granted and assigned to the
2 director in this chapter and elsewhere by law, the director may:

3 (1) With the advice of the commission, prepare and administer, through the various
4 divisions created by this chapter, a long-range comprehensive program for the conservation of
5 the natural resources of the state which best effectuates the purpose of this chapter and which
6 makes adequate provisions for the natural resources laws of the state;

7 (2) Sign and execute in the name of the state by the Division of Natural Resources any
8 contract or agreement with the federal government or its departments or agencies, subdivisions
9 of the state, corporations, associations, partnerships or individuals: *Provided*, That
10 intergovernmental cooperative agreements and agreements with nongovernmental organizations
11 in furtherance of providing a comprehensive program for the exploration, conservation,
12 development, protection, enjoyment and use of the natural resources of the state are exempt from
13 the provisions of §5A-3-1 *et seq.* of this code: *Provided, however*, That repair, renovation and
14 rehabilitation of existing facilities, buildings, amenities and infrastructure necessary to protect
15 public health or safety or to provide uninterrupted enjoyment and public use of state parks, state
16 forests, wildlife management areas and state natural areas under the jurisdiction of the Division
17 of Natural Resources are exempt from the provisions of §5A-3-1 *et seq.* of this code. Nothing in
18 this section authorizes new construction of buildings and new construction of recreational facilities
19 as defined in §20-5-4 of this code without complying with the provisions of §5A-3-1 *et seq.* of this

20 code.

21 (3) Conduct research in improved conservation methods and disseminate information
22 matters to the residents of the state;

23 (4) Conduct a continuous study and investigation of the habits of wildlife and, for purposes
24 of control and protection, to classify by regulation the various species into such categories as may
25 be established as necessary;

26 (5) Prescribe the locality in which the manner and method by which the various species of
27 wildlife may be taken, or chased, unless otherwise specified by this chapter.

28 (6) Hold at least six meetings each year at such time and at such points within the state,
29 as in the discretion of the Natural Resources Commission may appear to be necessary and proper
30 for the purpose of giving interested persons in the various sections of the state an opportunity to
31 be heard concerning open season for their respective areas, and report the results of the meetings
32 to the Natural Resources Commission before the season and bag limits are fixed by it;

33 (7) Suspend open hunting season upon any or all wildlife in any or all counties of the state
34 with the prior approval of the Governor in case of an emergency such as a drought, forest fire
35 hazard or epizootic disease among wildlife. The suspension shall continue during the existence
36 of the emergency and until rescinded by the director. Suspension, or reopening after such
37 suspension, of open seasons may be made upon 24 hours' notice by delivery of a copy of the
38 order of suspension or reopening to the wire press agencies at the state capitol;

39 (8) Supervise the fiscal affairs and responsibilities of the division;

40 (9) Designate such localities as he or she shall determine to be necessary and desirable
41 for the perpetuation of any species of wildlife;

42 (10) Enter private lands to make surveys or inspections for conservation purposes, to
43 investigate for violations of provisions of this chapter, to serve and execute warrants and
44 processes, to make arrests and to otherwise effectively enforce the provisions of this chapter;

45 (11) Acquire for the state in the name of the Division of Natural Resources by purchase,

46 condemnation, lease or agreement, or accept or reject for the state, in the name of the Division
47 of Natural Resources, gifts, donations, contributions, bequests or devises of money, security or
48 property, both real and personal, and any interest in such property, including lands and waters,
49 which he or she deems suitable for the following purposes:

50 (a) For state forests for the purpose of growing timber, demonstrating forestry, furnishing
51 or protecting watersheds or providing public recreation;

52 (b) For state parks or recreation areas for the purpose of preserving scenic, aesthetic,
53 scientific, cultural, archaeological or historical values or natural wonders, or providing public
54 recreation;

55 (c) For public hunting, trapping or fishing grounds or waters for the purpose of providing
56 areas in which the public may hunt, trap or fish, as permitted by the provisions of this chapter and
57 the rules issued hereunder;

58 (d) For fish hatcheries, game farms, wildlife research areas and feeding stations;

59 (e) For the extension and consolidation of lands or waters suitable for the above purposes
60 by exchange of other lands or waters under his or her supervision;

61 (f) For such other purposes as may be necessary to carry out the provisions of this chapter;

62 (12) Capture, propagate, transport, sell or exchange any species of wildlife as may be
63 necessary to carry out the provisions of this chapter;

64 (13) Sell timber for not less than the value thereof, as appraised by a qualified appraiser
65 appointed by the director, from all lands under the jurisdiction and control of the director, except
66 those lands that are designated as state parks and those in the Kanawha State Forest. The
67 appraisal shall be made within a reasonable time prior to any sale, reduced to writing, filed in the
68 office of the director and shall be available for public inspection. The director must obtain the
69 written permission of the Governor to sell timber when the appraised value is more than \$5,000.
70 The director shall receive sealed bids therefor, after notice by publication as a Class II legal
71 advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code and the publication

72 area for the publication shall be each county in which the timber is located. The timber so
73 advertised shall be sold at not less than the appraised value to the highest responsible bidder,
74 who shall give bond for the proper performance of the sales contract as the director shall
75 designate; but the director may reject any and all bids and re-advertise for bids. If the foregoing
76 provisions of this section have been complied with and no bid equal to or in excess of the
77 appraised value of the timber is received, the director may, at any time, during a period of six
78 months after the opening of the bids, sell the timber in such manner as he or she deems
79 appropriate, but the sale price may not be less than the appraised value of the timber advertised.
80 No contract for sale of timber made pursuant to this section may extend for a period of more than
81 10 years. And all contracts heretofore entered into by the state for the sale of timber may not be
82 validated by this section if a contract is otherwise invalid. The proceeds arising from the sale of
83 the timber so sold shall be paid to the Treasurer of the State of West Virginia and shall be credited
84 to the division and used exclusively for the purposes of this chapter: *Provided*, That nothing
85 contained herein may prohibit the sale of timber which otherwise would be removed from ~~right-of-~~
86 way's rights-of-way necessary for and strictly incidental to the extraction of minerals;

87 (14) Sell or lease, with the approval in writing of the Governor, coal, oil, gas, sand, gravel
88 and any other minerals that may be found in the lands under the jurisdiction and control of the
89 director, except those lands that are designated as state parks. The director, before making sale
90 or lease thereof, shall receive sealed bids therefor, after notice by publication as a Class II legal
91 advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the
92 publication area for such publication shall be each county in which such lands are located. The
93 minerals so advertised shall be sold or leased to the highest responsible bidder, who shall give
94 bond for the proper performance of the sales contract or lease as the director shall designate; but
95 the director may reject any and all bids and re-advertise for bids. The proceeds arising from any
96 such sale or lease shall be paid to the Treasurer of the State of West Virginia and shall be credited
97 to the division and used exclusively for the purposes of this chapter;

98 (15) Exercise the powers granted by this chapter for the protection of forests and regulate
99 fires and smoking in the woods or in their proximity at such times and in such localities as may be
100 necessary to reduce the danger of forest fires;

101 (16) Cooperate with departments and agencies of state, local and federal governments in
102 the conservation of natural resources and the beautification of the state;

103 (17) Report to the Governor each year all information relative to the operation and
104 functions of the division and the director shall make such other reports and recommendations as
105 may be required by the Governor, including an annual financial report covering all receipts and
106 disbursements of the division for each fiscal year, and he or she shall deliver the report to the
107 Governor on or before December 1, next after the end of the fiscal year so covered. A copy of the
108 report shall be delivered to each house of the Legislature when convened in January next
109 following;

110 (18) Keep a complete and accurate record of all proceedings, record and file all bonds
111 and contracts taken or entered into and assume responsibility for the custody and preservation of
112 all papers and documents pertaining to his or her office, except as otherwise provided by law;

113 (19) Offer and pay, in his or her discretion, rewards for information respecting the violation,
114 or for the apprehension and conviction of any violators, of any of the provisions of this chapter;

115 (20) Require such reports as he or she may determine to be necessary from any person
116 issued a license or permit under the provisions of this chapter, but no person may be required to
117 disclose secret processes or confidential data of competitive significance;

118 (21) Purchase as provided by law all equipment necessary for the conduct of the division;

119 (22) Conduct and encourage research designed to further new and more extensive uses
120 of the natural resources of this state and to publicize the findings of the research;

121 (23) Encourage and cooperate with other public and private organizations or groups in
122 their efforts to publicize the attractions of the state including, completing the feasibility study for
123 the Beech Fork State Park Lodge as follows:

124 (A) The director shall convene, prior to October 1, 2019, two public hearings:

125 (i) An initial public hearing shall be for the purpose of seeking public input regarding
126 options for the construction of a lodge and a conference center, including all available public,
127 private or public-private partnership (PPP) funding and financing options; and

128 (ii) A subsequent public hearing at which the feasibility study and any recommendation
129 shall be available for public comment;

130 (B) The public hearings required by this subdivision must be held in a suitable location
131 reasonably close to Beech Fork State Park so as to accommodate public participation from the
132 citizens of Cabell, Lincoln, and Wayne counties; and

133 (C) Upon completion of the feasibility study it shall be submitted by the director to the Joint
134 Committee on Government and Finance on or before December 1, 2019;

135 (24) Accept and expend, without the necessity of appropriation by the Legislature, any gift
136 or grant of money made to the division for all purposes specified in this chapter and he or she
137 shall account for and report on all such receipts and expenditures to the Governor;

138 (25) Cooperate with the state historian and other appropriate state agencies in conducting
139 research with reference to the establishment of state parks and monuments of historic, scenic
140 and recreational value and to take such steps as may be necessary in establishing the
141 monuments or parks as he or she deems advisable;

142 (26) Maintain in his or her office at all times, properly indexed by subject matter and also
143 in chronological sequence, all rules made or issued under the authority of this chapter. The
144 records shall be available for public inspection on all business days during the business hours of
145 working days;

146 (27) Delegate the powers and duties of his or her office, except the power to execute
147 contracts not related to land and stream management, to appointees and employees of the
148 division, who shall act under the direction and supervision of the director and for whose acts he
149 or she shall be responsible;

150 (28) Conduct schools, institutions and other educational programs, apart from or in
151 cooperation with other governmental agencies, for instruction and training in all phases of the
152 natural resources programs of the state;

153 (29) Authorize the payment of all or any part of the reasonable expenses incurred by an
154 employee of the division in moving his or her household furniture and effects as a result of a
155 reassignment of the employee: *Provided*, That no part of the moving expenses of any one such
156 employee may be paid more frequently than once in 12 months;

157 (30) Establishing procedures and fee schedule for individuals applying for limited permit
158 hunts; and

159 (31) Cooperate with the State Resiliency Office to the fullest extent practicable to assist
160 that office in fulfilling its duties; and

161 ~~(34)~~ (32) Promulgate rules, in accordance with the provisions of §29A-1-1 *et seq.* of this
162 code, to implement and make effective the powers and duties vested in him or her by the
163 provisions of this chapter and take such other steps as may be necessary in his or her discretion
164 for the proper and effective enforcement of the provisions of this chapter.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 1. DEPARTMENT OF ENVIRONMENTAL PROTECTION.

§22-1-6. Secretary of the Department of Environmental Protection.

1 (a) The secretary is the chief executive officer of the department. Subject to section seven
2 of this article and other provisions of law, the secretary shall organize the department into such
3 offices, sections, agencies and other units of activity as may be found by the secretary to be
4 desirable for the orderly, efficient and economical administration of the department and for the
5 accomplishment of its objects and purposes. The secretary may appoint a deputy secretary, chief
6 of staff, assistants, hearing officers, clerks, stenographers and other officers, technical personnel
7 and employees needed for the operation of the department and may prescribe their powers and

8 duties and fix their compensation within amounts appropriated.

9 (b) The secretary has the power to and may designate supervisory officers or other officers
10 or employees of the department to substitute for him or her on any board or commission
11 established under this code or to sit in his or her place in any hearings, appeals, meetings or other
12 activities with such substitute having the same powers, duties, authority and responsibility as the
13 secretary. The secretary has the power to delegate, as he or she considers appropriate, to
14 supervisory officers or other officers or employees of the department his or her powers, duties,
15 authority and responsibility relating to issuing permits, hiring and training inspectors and other
16 employees of the department, conducting hearings and appeals and such other duties and
17 functions set forth in this chapter or elsewhere in this code.

18 (c) The secretary has responsibility for the conduct of the intergovernmental relations of
19 the department, including assuring:

20 (1) That the department carries out its functions in a manner which supplements and
21 complements the environmental policies, programs and procedures of the federal government,
22 other state governments and other instrumentalities of this state; and

23 (2) That appropriate officers and employees of the department consult with individuals
24 responsible for making policy relating to environmental issues in the federal government, other
25 state governments and other instrumentalities of this state concerning differences over
26 environmental policies, programs and procedures and concerning the impact of statutory law and
27 rules upon the environment of this state.

28 (d) In addition to other powers, duties and responsibilities granted and assigned to the
29 secretary by this chapter, the secretary is authorized and empowered to:

30 (1) Sign and execute in the name of the state by the Department of Environmental
31 Protection any contract or agreement with the federal government or its departments or agencies,
32 subdivisions of the state, corporations, associations, partnerships or individuals: *Provided*, That
33 the powers granted to the secretary to enter into agreements or contracts and to make

34 expenditures and obligations of public funds under this subdivision may not exceed or be
35 interpreted as authority to exceed the powers granted by the Legislature to the various
36 commissioners, directors or board members of the various departments, agencies or boards that
37 comprise and are incorporated into each secretary's department pursuant to the provisions of
38 chapter five-f of this code;

39 (2) Conduct research in improved environmental protection methods and disseminate
40 information to the citizens of this state;

41 (3) Enter private lands to make surveys and inspections for environmental protection
42 purposes; to investigate for violations of statutes or rules which the department is charged with
43 enforcing; to serve and execute warrants and processes; to make arrests; issue orders, which for
44 the purposes of this chapter include consent agreements; and to otherwise enforce the statutes
45 or rules which the department is charged with enforcing;

46 (4) Require any applicant or holder of a permit to install, establish, modify, operate or close
47 a solid waste facility to furnish the fingerprints of the applicant or permittee; any officer, director
48 or manager of the applicant or permittee; any person owning a five percent or more interest,
49 beneficial or otherwise, in the applicant's or permittee's business; or any other person conducting
50 or managing the affairs of the applicant or permittee or of the proposed licensed premises, in
51 whole or in part. These fingerprints may be used to obtain and review any police record for the
52 purposes set may be relevant pursuant to §20-15-5 of this code, and to use the fingerprints
53 furnished to conduct a criminal records check through the Criminal Identification Bureau of the
54 West Virginia State Police and a national criminal history check through the Federal Bureau of
55 Investigation. The results of the checks shall be provided to the secretary.

56 (5) Acquire for the state in the name of the Department of Environmental Protection by
57 purchase, condemnation, lease or agreement, or accept or reject for the state, in the name of the
58 Department of Environmental Protection, gifts, donations, contributions, bequests or devises of
59 money, security or property, both real and personal, and any interest in property;

60 (6) Provide for workshops, training programs and other educational programs, apart from
61 or in cooperation with other governmental agencies, necessary to ensure adequate standards of
62 public service in the department. The secretary may provide for technical training and specialized
63 instruction of any employee. Approved educational programs, training and instruction time may
64 be compensated for as a part of regular employment. The secretary is authorized to pay out of
65 federal or state funds, or both, as such funds are available, fees and expenses incidental to the
66 educational programs, training and instruction. Eligibility for participation by employees shall be
67 in accordance with guidelines established by the secretary;

68 (7) Issue certifications required under 33 U.S.C. §1341 of the federal Clean Water Act and
69 enter into agreements in accordance with the provisions of section seven-a, article eleven of this
70 chapter. Prior to issuing any certification the secretary shall solicit from the Division of Natural
71 Resources reports and comments concerning the possible certification. The Division of Natural
72 Resources shall direct the reports and comments to the secretary for consideration; ~~and~~

73 (8) Notwithstanding any provisions of this code to the contrary, employ in-house counsel
74 to perform all legal services for the secretary and the department, including, but not limited to,
75 representing the secretary, any chief, the department or any office thereof in any administrative
76 proceeding or in any proceeding in any state or federal court. Additionally, the secretary may call
77 upon the Attorney General for legal assistance and representation as provided by law; and

78 (9) Cooperate with the State Resiliency Office to the fullest extent practicable to assist that
79 office in fulfilling its duties.

80 (e) The secretary shall be appointed by the Governor, by and with the advice and consent
81 of the Senate, and serves at the will and pleasure of the Governor.

82 (f) At the time of his or her initial appointment, the secretary must be at least 30 years old
83 and shall be selected with special reference and consideration given to his or her administrative
84 experience and ability, to his or her demonstrated interest in the effective and responsible
85 regulation of the energy industry and the conservation and wise use of natural resources. The

86 secretary must have at least a bachelor's degree in a related field and at least three years of
 87 experience in a position of responsible charge in at least one discipline relating to the duties and
 88 responsibilities for which the secretary will be responsible upon assumption of the office. The
 89 secretary may not be a candidate for or hold any other public office, may not be a member of any
 90 political party committee and shall immediately forfeit and vacate his or her office as secretary in
 91 the event he or she becomes a candidate for or accepts appointment to any other public office or
 92 political party committee.

93 (g) The secretary shall receive an annual salary as provided in §6-7-2a of this code and
 94 is allowed and shall be paid necessary expenses incident to the performance of his or her official
 95 duties. Prior to the assumption of the duties of his or her office, the secretary shall take and
 96 subscribe to the oath required of public officers prescribed by section five, article IV of the
 97 Constitution of West Virginia and shall execute a bond, with surety approved by the Governor, in
 98 the penal sum of \$10,000, which executed oath and bond will be filed in the Office of the Secretary
 99 of State. Premiums on the bond shall be paid from the department funds.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 31. STATE RESILIENCY AND FLOOD PROTECTION PLAN ACT.

§29-31-2. State Resiliency Office

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 is hereby created. The office shall be
 7 organized within the ~~Development Office in the Department of Commerce~~ Office of the Governor.
 8 The Office will serve as the recipient of disaster recovery and resiliency funds, excluding federal

9 Stafford Act funds, and the coordinating agency of recovery and resiliency efforts, including
10 matching funds for other disaster recovery programs, excluding those funds and efforts under the
11 direct control of the State Resiliency Officer pursuant to §15-5-4b and §15-5-24 of this code for a
12 particular event.

13 (b) (1) The State Resiliency Office Board is also established and shall consist of the
14 following ~~eight~~ members: the Commissioner of Agriculture or his or her designee; the Secretary
15 of the Department of Commerce or his or her designee; the Director of the Division of Natural
16 Resources or his or her designee; the Secretary of the Department of Environmental Protection
17 or his or her designee; the Executive Director of the State Conservation Agency or his or her
18 designee; the President of the West Virginia Emergency Management Council or his or her
19 designee; the Secretary of the Department of Military Affairs and Public Safety or his or her
20 designee; the Secretary of Transportation or his or her designee; the Adjutant General of the West
21 Virginia National Guard or his or her designee; ~~and~~ the Director of the Division of Homeland
22 Security and Emergency Management ~~within the Department of Military Affairs and Public Safety~~
23 or his or her designee; two members of the West Virginia Senate, to be appointed by the President
24 of the Senate; and two members of the West Virginia House of Delegates, to be appointed by the
25 Speaker of the House of Delegates.

26 (2) A member of the Board holds office so long as he or she retains the office or position
27 by virtue of which he or she is serving on the Board. A majority of the Board is a quorum and the
28 concurrence of a Board in any matter within their duties is required for its determination. The
29 members of the Board may receive no compensation for their services on the committee, but are
30 entitled to reimbursement of expenses, including traveling expenses necessarily incurred in the
31 discharge of their duties on the Board.

32 (3) The Board shall:

33 (A) Provide for the keeping of a full and accurate record of all proceedings and of all
34 resolutions, rules, and orders issued or adopted and of its other official actions;

35 (B) Shall adopt a seal, which shall be judicially noticed;

36 (C) Provide for an annual audit of the accounts of receipts and disbursements of the State
37 Resiliency Office; and

38 (D) Perform those acts necessary for the execution of its functions under this article.

39 (c) (1) ~~The Secretary of the Department of Commerce~~ State Resiliency Officer shall be
40 the chair of the State Resiliency Office Board, and, shall be appointed by the Governor with the
41 advice and consent of the Senate. In the absence of the chair, any member designated by the
42 members present may act as chair.

43 (2) The State Resiliency Officer shall be vested with the authority and duties prescribed to
44 the office within this article.

45 (3) The State Resiliency Officer shall be a person who has:

46 (A) Have at least five years managerial or strategic planning experience in matters relating
47 to flood control and hazard mitigation or, alternatively in disaster recovery, emergency
48 management, or emergency response; and

49 (B) Be thoroughly knowledgeable in matters relating to flood control and hazard mitigation,
50 or alternatively, in matters relating to disaster recovery, emergency management, and emergency
51 response.

52 (4) The State Resiliency Officer shall employ a deputy who shall assist the State Resiliency
53 Officer in carrying out the duties of the office; this deputy shall be selected by the State Resiliency
54 Officer and an appointment as deputy shall require a two-thirds vote of the of the State Resiliency
55 Office Board. Applicants for the deputy position shall at a minimum:

56 (A) Have at least five years managerial or strategic planning experience in matters relating
57 to flood control and hazard mitigation or, alternatively in disaster recovery, emergency
58 management, or emergency response; and

59 (B) Be thoroughly knowledgeable in matters relating to flood control and hazard mitigation,
60 or alternatively, in matters relating to disaster recovery, emergency management, and emergency

61 response; and

62 (C) If the State Resiliency Officer has his or her primary experience in flood control and
63 hazard mitigation then his or her deputy must have experience in disaster recovery, emergency
64 management, or emergency response; alternatively, if the State Resiliency Officer has his or her
65 primary experience in disaster recovery, emergency management, or emergency response then
66 his or her deputy must have experience in flood control and hazard mitigation.

67 (d) The board shall meet no less than once each calendar quarter at the time and place
68 designated by the chair and the board shall work together with the State Resiliency Officer to fulfill
69 the mission given to the State Resiliency Office to coordinate efforts for emergency and disaster
70 planning, response, recovery, and resiliency between government agencies, first responders and
71 others .

72 The Board will assist and advise the State Resiliency Officer in developing policies to
73 accomplish, at a minimum, the following specific tasks in order to achieve these goals, and will
74 assist the State Resiliency Officer in devising plans and developing procedures which will ensure
75 that agencies and political subdivisions of the State carry out these following specific tasks:

76 (1) Establishing mechanisms to coordinate resiliency related programs and activities
77 among state agencies and to encourage intergovernmental as well as cross-sector coordination
78 and collaboration;

79 (2) Evaluate the state's role in construction permitting process and identify opportunities
80 to expedite the permitting process post-disaster and for selected types of mitigation and
81 adaptation actions;

82 (3) Conduct a review of laws and regulations to identify those that create or add to risk, or
83 interfere with the ability to reduce risk or to improve resiliency;

84 (4) Conduct an inventory of relevant critical planned activity by state agencies to determine
85 their proposed impact upon resiliency;

86 (5) Make recommendations regarding practical steps that can be taken to improve

87 efficiencies, and to pool and leverage resources to improve resiliency;

88 (6) Identify, prioritize and evaluate issues affecting implementation of mitigation and
89 adaptation actions, including but limited to, the effect of loss of land in context of zoning and other
90 land use regulations, possible conflicts between public hazard mitigation/adaptation planning and
91 private property interests (e.g. buy-out programs, projects to increase flood storage), develop
92 guidance for cities and towns, real estate professionals, property owners under existing law and
93 regulations; and develop proposals for changes in laws, policies and regulations, as needed;

94 (7) Ensure all counties and municipalities have up to date Hazard Mitigation Plans and
95 Local Comprehensive Disaster Plans that are consistent with and coordinated to the state's
96 Hazard Mitigation Plans and Comprehensive Disaster Plans; including, but not limited to, assisting
97 them in developing planning guidance for cities and towns to complete and/or update Hazard
98 Mitigation Plans; providing technical assistance to help counties and municipalities meet these
99 standards; and provide notice to counties and municipalities of funding opportunities to implement
100 projects outlined in their Hazard Mitigation Plans;

101 (8) Conduct risk assessments, including but not limited to, examining state highway
102 corridors and associated drainage systems for stormwater inundation, impacts of downed trees,
103 effects on utilities, etc.; assessment of known stormwater impacts between state highways and
104 municipal drainage systems, options to eliminate or mitigate such impact; a housing vulnerability
105 assessment for structures in riparian zones; and a vulnerability assessment of the State's historic
106 and cultural resources;

107 (9) Establish working groups that will conduct assessments for varied sectors of the
108 economy, such as small business, ports and river traffic, agriculture, manufacturing, and tourism;
109 these assessments should address vulnerabilities and economic impacts, options to mitigate
110 impacts, options to improve preparedness, response and recovery, and economic opportunities
111 associated with design, engineering, technological and other skills and capabilities that can
112 improve resilience;

113 (10) Establish emergency permitting procedures to expedite issuance of state permits
 114 following disasters, and develop guidance (model procedures) for political subdivisions to follow;
 115 and

116 (11) Establish a model long-term recovery plan that would be activated after catastrophic
 117 events.

118 All decisions of the board shall be decided by a majority vote of the members.

119 ~~(d)~~ (e) The chair State Resiliency Office shall provide adequate staff from their respective
 120 that office, to ensure the meetings of the board are properly noticed, meetings of the board are
 121 facilitated, board meeting minutes are taken, records and correspondence kept and that reports
 122 of the board are produced in a timely manner.

§29-31-3. Authority of State Resiliency Officer; ~~authority of board and State Resiliency~~
Officer.

1 The State Resiliency Office, ~~through its board may~~ will coordinate the state's disaster
 2 response mission and the State Resiliency Officer serve as the primary representative of the
 3 Governor. The State Resiliency Officer will act on behalf of the Governor in the event of the
 4 proclamation of the existence of a state of emergency or state of preparedness under the
 5 provisions of §15-5-6 of this code. The State Resiliency Officer will assist and advise the
 6 Governor on all disaster response issues and serve as a liaison between the Governor's office,
 7 and all other parties, whether state, federal, public or private to further the purposes of this article.

8 The State Resiliency Officer will:

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

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

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

- 15 (4) Report to the Joint Legislative Committee on Flooding at least quarterly;
- 16 (5) Catalog, maintain, and monitor a listing of current and proposed capital expenditures
17 to reduce or mitigate flood damage and other hazards, and ~~or other~~ useful and desirable resiliency
18 efforts;
- 19 (6) Coordinate planning of flood projects with federal agencies;
- 20 (7) Improve professional management of flood plains;
- 21 (8) Provide education and outreach on flooding issues to the citizens of this state;
- 22 (9) Establish a single website integrating all agency flood information;
- 23 (10) Monitor federal funds and initiatives that become available for disaster recovery and
24 economic and community resiliency or other flood or hazard mitigation and to direct expenditure
25 on behalf of the Governor;
- 26 (11) Pursue additional funds and resources to assist not only with long-term recovery
27 efforts but also long-term community and statewide resiliency efforts;
- 28 (12) Coordinate, integrate and expand planning efforts in the state for hazard mitigation,
29 long-term disaster recovery, and economic diversification;
- 30 (13) Coordinate long-term disaster recovery efforts in response to disasters as they occur;
- 31 (14) Establish and facilitate regular communication between federal, state, local, and
32 private sector agencies and organizations to further economic and disaster resilience; ~~and~~
- 33 (15) Receive resources, monetary or otherwise, from any other governmental entity and
34 disburse those resources to effectuate the purposes of this article;
- 35 (16) Execute cooperative agreements, where appropriate, between the State Resiliency
36 Office and the federal and/or state governments;
- 37 (17) Contract, where appropriate, on behalf of the State Resiliency Office with the federal
38 government, its instrumentalities and agencies, any state, territory or the District of Columbia, and
39 its agencies and instrumentalities, municipalities, foreign governments, public bodies, private
40 corporations, partnerships, associations and individuals;

41 (18) Use funds administered by the State Resiliency Office for the maintenance,
42 construction or reconstruction of capital repair and replacement items as necessary to effectuate
43 the purposes of this article;

44 (19) Accept and use funds from the federal government, its instrumentalities and agencies,
45 any state, territory or the District of Columbia, and its agencies and instrumentalities,
46 municipalities, foreign governments, public bodies, private corporations, partnerships,
47 associations and individuals for the purposes of disaster recovery, hazard mitigation, flood
48 mitigation, flood prevention, and disaster response programs;

49 (20) Hire necessary employees at an appropriate salary equivalent to a competitive wage
50 rate;

51 (21) Enroll appropriate employees in PERS, PEIA and workers' compensation and
52 unemployment programs, or their equivalents: *Provided*, That the State Resiliency Office, through
53 the receipt of federal and/or state funds, pays the required employer contributions;

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

56 (23) Have the ability to secure all other bonding, insurance or other liability protections
57 necessary for its employees to fulfill their duties and responsibilities;

58 (24) Have the ability to draw upon other departments, divisions, agencies, and all other
59 subdivisions of the state for research and input in fulfilling the requirements of this article, and its
60 requests are to have priority over other such requests;

61 (25) Participate in the interdepartmental transfer of permanent State employees, as if he
62 were a department secretary, under the provisions of §5F-2-7 *et seq.* of this code.

63 (26) Notwithstanding any other provision of this code to the contrary, acquire legal services
64 that are necessary, including representation of the board, its employees and officers before any
65 court or administrative body from the office of the Attorney General, who shall provide such legal
66 assistance and representation, and

67 (27) Take all other actions necessary and proper to effectuate the purposes of this article.
 68 The office shall have any other additional authority, duties, and responsibilities as
 69 prescribed by the Governor to effectuate the purposes of this article. Due to the at-will employment
 70 relationship with the office, its employees may not avail themselves of the state grievance
 71 procedure as set forth in §29-6a-1 et seq. of this code.

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

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

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 Office ~~board~~ for the previous year.

§29-31-5. Employees.

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

3 (1) All employees will be exempt from both the classified services category and the
 4 classified exempt services category as set forth in §29-6-4 of this code.

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

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

9 (4) Employees will participate in the PEIA, PERS and workers' compensation and

10 unemployment compensation programs, or their equivalents. Public safety-related positions will
11 continue to require dual status membership as outlined in §15-1b-26 of this code.

12 (5) All employees and officers of the State Resiliency Office who are entrusted with funds
13 or property shall execute of surety bonds.

14 (b) The State Resiliency Officer will set appropriate salary rates for employees equivalent
15 to a competitive wage rate necessary to support a specific mission.

CHAPTER 33. INSURANCE.

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-23. Creation of the State Office of the National Flood Insurance Program, Responsibilities.

1 (a) The Legislature, finding that the National Flood Insurance Program is a voluntary
2 federal program under which federal flood insurance is made available to participating
3 communities is of vital importance to the citizens of West Virginia does hereby create the State
4 Office of the National Flood Insurance Program, to be housed in the office of the Insurance
5 Commissioner of West Virginia, and which office shall administer this program.

6 (b) The State Office of the National Flood Insurance Program shall have a coordinator
7 who shall issue such regulations, guidance, instructions as necessary to effectively administer the
8 program. The coordinator shall conduct trainings and will adopt and enforce adequate land use
9 and development criteria that are consistent with the minimum standards established by the
10 National Flood Insurance Program and shall report to the Insurance Commissioner.

11 (c) Any state-owned property that is located in a non-participating local community will be
12 governed by the rules promulgated by the Insurance Commissioner and filed in the Code of State
13 Rules.

14 (d) The coordinator, in consultation with the Insurance Commissioner, and with the
15 assistance of floodplain mangers around the state shall develop and publish a strategic plan to

16 establish shared goals, define a path to meet those goals and, shall, invite other governmental
17 units to adopt these goals and objectives. The strategic plan shall be initially presented by the
18 Coordinator to the State Resiliency Officer and to the State Resiliency Office Board who shall
19 review and approve the strategic plan and that plan shall be so presented and approved no less
20 than biannually thereafter. The strategic plan shall be made available to the public.

NOTE: The purpose of this bill is to establish of the State Resiliency Office and State Resiliency Officer.

This bill has been recommended for passage by the Joint Legislative Committee on Flooding.

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