WEST virginia legislature

2021 regular session

Introduced

House Bill 2179

By Delegate D. Jeffries

[Introduced February 10, 2021; Referred to the Committee on Veterans' Affairs and Homeland Security then the Judiciary]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §15-1L-1, §15-1L-2, §15-1L-3, §15-1L-4, and §15-1L-5; and to amend and reenact §15-5-1, §15-5-2, and §15-5-3 of said code, all relating to the West Virginia Division of Homeland Security and Emergency Management; providing for legislative findings; providing for definitions; establishing the West Virginia Civil Authority; providing West Virginia Division of Homeland Security and Emergency Management to have authority over the West Virginia Civil Authority; establishing the powers and duties over the authority; providing for the authority to hire and administer employees; providing for conditions of employment for employees; providing that employees are entitled to participate in health and welfare plans, state retirement plans, and workers compensation and unemployment programs as a benefit of employment; providing that the West Virginia Division of Homeland Security and Emergency Management coordinate efforts with the office of the Governor; providing for altered definitions; and providing that the West Virginia Division of Homeland Security and Emergency Management is continued under the office of the Governor.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1L. West Virginia Civil Authority Act.

§15-1L-1. Short title

This article shall be known and may be cited as the West Virginia Civil Authority Act.

§15-1L-2. Legislative findings.

The Legislature finds that the West Virginia Division of Homeland Security and Emergency Management (WVDHSEM) is a unique entity that has a specific mission for security and protection of West Virginia and the United States. In this capacity, the West Virginia Division of Homeland Security and Emergency Management receives funds to administer programs, including the hiring of employees, that the federal government, including the Department of Homeland Security, provides to West Virginia Division of Homeland Security and Emergency Management in support of specific activities for various federal agencies for national security and homeland security purposes. These programs fulfill specific agency purposes and necessarily require continued funding by the federal government.

Additionally, the WVDHSEM continues to receive federal funding to develop and maintain capabilities to respond and assist West Virginia during disasters to support national and homeland security objectives. These activities require the WVDHSEM to enter into contracts and subcontracts for specialized technical services and hire persons who will be compensated, in whole or in part, with federal funds. It is further determined and declared that it is necessary for the WVDHSEM to develop and implement a procedure for hiring and management of non-Division of Personnel (DOP) employees to support its specific missions.

§15-1L-3. Definitions.

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

“Authority” means the West Virginia Civil Authority.

“BRIM” means the West Virginia Board of Risk and Insurance Management.

“Employee” means any person who, within the at-will employment relationship, is hired to perform duties related to state security, national security, homeland security, and other emergency management related or sponsored programs.

“PEIA” means Public Employees Insurance Act.

“PERS” means Public Employees Retirement System.

“WVDHSEM” means West Virginia Division of Homeland Security and Emergency Management, including its Homeland Security and Emergency Management components.

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

(a) The West Virginia Civil Authority is hereby established to administer state security, national security, homeland security, and other emergency management-related or sponsored programs.

(b) The authority will be administered by the Executive Director and the West Virginia Division of Homeland Security and Emergency Management.

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

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

(1) Execute cooperative agreements between the agency and the federal and/or state governments;

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

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

(4) Accept and use funds from the federal government, its instrumentalities and agencies, any state, territory or the District of Columbia and its agencies and instrumentalities, municipalities, foreign governments, public bodies, private corporations, partnerships, associations and individuals for the purposes of national security, homeland security and disaster response programs;

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

(6) Contract on behalf of the WVDHSEM with the federal government, its instrumentalities and agencies, any state, territory or the District of Columbia and its agencies and instrumentalities, municipalities, foreign governments, public bodies, private corporations, partnerships, associations and individuals for specialized technical services at a rate commensurate with industry standards as determined by the executive director to support specific activities related to state security, national security, homeland security and other nonmilitary-related programs;

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

(8) Enroll employees in PERS, PEIA, and workers’ compensation and unemployment programs, or their equivalents: *Provided*, That the authority, through the receipt of federal and/or state funds, pays the required employer contributions;

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

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

(11) Due to the at-will employment relationship with the authority, its employees may not avail themselves of the state grievance procedure as set forth in §29-6A-1 *et seq*. of this code; and

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

§15-1L-5. Employees.

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

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

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

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

(4) Employees will participate in the PEIA, PERS, and workers’ compensation and unemployment compensation programs, or their equivalents. Public safety-related positions will continue to require dual status membership as outlined in §15-1B-26 of this code.

(b) The executive director will set appropriate salary rates for employees equivalent to a competitive wage rate necessary to support a specific mission.

ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.

§15-5-1. Policy and purpose.

In view of the existing and increasing possibility of the occurrence of disasters of unprecedented size and destructiveness and large-scale threats, resulting from terrorism, enemy attack, sabotage or other hostile action, or from fire, flood, earthquakes or other natural or man-made causes and in order to insure that preparations of this state will be adequate to deal with the disasters and large-scale threats, and generally to provide for the common defense and to protect the public peace, health and safety and to preserve the lives and property of the people of the state, it is found and declared to be necessary: (1) To create the Division of Homeland Security and Emergency Management and to authorize the creation of local and regional organizations for emergency services in the political subdivisions of the state; (2) to confer upon the Governor and upon the executive heads of governing bodies of the political subdivisions of the state the emergency powers provided herein; (3) to provide for the rendering of mutual aid among the political subdivisions of the state and with other states and to cooperate with the federal government with respect to the carrying out of emergency services and homeland security functions; and (4) to establish and implement comprehensive homeland security and emergency management plans to deal with such disasters and large-scale threats. It is further declared to be the purpose of this article and the policy of the state that all homeland security and emergency management funds and functions of this state be coordinated to the maximum extent with the ~~Secretary of the Department of Military Affairs and Public Safety~~ office of the Governor and with the comparable functions of the federal government including its various departments and agencies, of other states and localities and of private agencies of every type, so that the most effective preparation and use may be made of the nation’s and this state’s manpower, resources, and facilities for dealing with any disaster or large-scale threat that may occur.

§15-5-2. Definitions.

As used in this article:

~~(a)~~ “Emergency services” means the preparation for and the carrying out of all emergency functions, other than functions for which military forces are primarily responsible, to protect, respond and recover, to prevent, detect, deter, and mitigate, to minimize and repair injury and damage resulting from disasters or other event caused by flooding, terrorism, enemy attack, sabotage or other natural or other man-made causes. These functions include, without limitation, firefighting services, police services, medical and health services, communications, radiological, chemical, and other special weapons defense, evacuation of persons from stricken areas, emergency welfare services, emergency transportation, existing or properly assigned functions of plant protection, temporary restoration of public utility services and other functions related to the health, safety and welfare of the citizens of this state, together with all other activities necessary or incidental to the preparation for and carrying out of the foregoing functions. Disaster includes the imminent threat of disaster as well as its occurrence and any power or authority exercisable on account of a disaster that may be exercised during the period when there is an imminent threat thereof;

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

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

~~(d)~~ “Political subdivision” means any county or municipal corporation in this state;

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

~~(f)~~ “Code” means the Code of West Virginia, 1931, as amended;

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

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

~~(i)~~ “Disaster recovery activities” means activities undertaken prior to, during or following a disaster to provide, or to participate in the provision of, emergency services, temporary housing, residential housing, essential business activities and community facilities;

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

~~(k)~~ “Person” means any individual, corporation, voluntary organization or entity, partnership, firm or other association, organization or entity organized or existing under the laws of this or any other state or country;

~~(l)~~ “Recovery fund” means the West Virginia Disaster Recovery Trust Fund created by this article;

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

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

~~(o) “Secretary” means the Secretary of the West Virginia Department of Military Affairs and Public Safety~~

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

(a) The Office of Emergency Services is continued as the Division of Homeland Security and Emergency Management ~~within the Department of Military Affairs and Public Safety~~ under the office of the Governor. All of the allied, advisory, affiliated or related entities, and funds associated with the Office of Emergency Services and all its functions, personnel, and property, are transferred to, incorporated in, and administered as a part of the Division of Homeland Security and Emergency Management. Wherever the words “Office of Emergency Services” appear in this code, they shall mean the Division of Homeland Security and Emergency Management.

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

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

(d) The director and other personnel of the Division of Homeland Security and Emergency Management shall be provided with appropriate office space, furniture, equipment, supplies, stationery, and printing in the same manner as provided for personnel of other state agencies.

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

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

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

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

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

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

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

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

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

NOTE: The purpose of this bill is to establish the West Virginia Civil Authority Act.

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