

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

Senate Bill 677

BY SENATORS SWOPE AND RUCKER

[Originating in the Committee on Economic
Development; reported on February 23, 2023]

1 A BILL to amend and reenact §15-5-2 of the Code of West Virginia, 1931, as amended; to repeal
2 §15-5-4b, §15-5-4c, §15-5-24, §15-5-25, and §15-5-26, and of said code; to amend and
3 reenact §29-31-1 and §29-31-2 of said code; to amend said code by adding thereto new
4 sections, designated §29-31-2a; to amend and reenact §29-31-3 of said code; and to
5 amend said code by adding thereto new sections, designated §29-31-6, §29-31-7, §29-
6 31-8, §29-31-9, §29-31-10, §29-31-11, §29-31-12, §29-31-13, §29-31-14, and §29-31-15,
7 all relating to the West Virginia Disaster Recovery Trust Fund and clarification of roles and
8 responsibilities of the State Resiliency Officer; requiring the State Resiliency Officer to
9 submit a new Flood Resiliency Plan by a date certain and then biannually thereafter;
10 directing the State Resiliency Officer to hire additional staff; removing the West Virginia
11 Disaster Recovery Trust Fund from the jurisdiction of the Division of Homeland Security
12 and Emergency Management; providing initial capital for the State Resiliency Office;
13 allowing for disbursement of post-disaster recovery assistance; requiring that 50 percent
14 of disbursements be expended to benefit low-income communities; requiring resilience
15 and mitigation certifications prior to disbursement to political subdivisions; requiring the
16 State Resiliency Officer to develop an annual expenditure report; establishing the West
17 Virginia Resiliency Trust Fund within the State Resiliency and Flood Protection Act;
18 requiring 50 percent of disbursements be expended to implement nature-based solutions;
19 allowing for grants to political subdivisions for both Flood Resiliency Plan implementation
20 and local flood prevention and protection studies; and requiring 25 percent of Community
21 Development Block Grant Disaster Recovery Funds received by the state as a result of a
22 flood disaster to be deposited in the Flood Resiliency Trust Fund.

Be it enacted by the Legislature of West Virginia:

CHAPTER 15. PUBLIC SAFETY.

**ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY
MANAGEMENT.**

§15-5-2. Definitions.

1 As used in this article:

2 ~~"Board" means the West Virginia Disaster Recovery Board created by this article~~

3 "Code" means the Code of West Virginia, 1931, as amended;

4 "Community facilities" means a specific work, or improvement within this state, or a
5 specific item of equipment or tangible personal property owned or operated by any political
6 subdivision or nonprofit corporation and used within this state to provide any essential service to
7 the general public;

8 "Critical infrastructure" includes any systems and assets, whether physical or virtual, so
9 vital to the state that the incapacity or destruction of such systems and assets would have a
10 debilitating impact on security, state economic security, state public health or safety, or any
11 combination of those matters.

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

17 "Disaster ~~recovery~~ response activities" means activities undertaken prior to, during or
18 immediately following a disaster to provide, or to participate in the provision of, critical
19 infrastructure, emergency services, temporary housing, residential housing, essential business
20 activities, and community facilities;

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

35 "Essential business activities" means a specific work or improvement within this state or a
36 specific item of equipment or tangible personal property used within this state by any person to
37 provide any essential goods or critical infrastructure services determined by the authority to be
38 necessary for continued operations during a disaster, state of emergency, or state of
39 preparedness, and for recovery from a disaster;

40 "Essential workers" means employees or contractors that fall under the definition of
41 essential business activities during a disaster, state of emergency, or state of preparedness.

42 "Local organization for emergency services" means an organization created in accordance
43 with the provisions of this article by state or local authority to perform local emergency services
44 function;

45 "Mobile support unit" means an organization for emergency services created in
46 accordance with the provisions of this article by state or local authority to be dispatched by the
47 Governor to supplement local organizations for emergency services in a stricken area;

48 "Person" means any individual, corporation, voluntary organization or entity, partnership,
49 firm, or other association, organization, or entity organized or existing under the laws of this or
50 any other state or country;

51 "Political subdivision" means any county or municipal corporation in this state;

52 ~~"Recovery fund" means the West Virginia Disaster Recovery Trust Fund created by this~~
53 ~~article~~

54 "Residential housing" means a specific work or improvement within this state undertaken
55 primarily to provide dwelling accommodations, including the acquisition, construction or
56 rehabilitation of land, buildings and improvements thereto, for residential housing, including, but
57 not limited to, facilities for temporary housing and emergency housing, and any other nonhousing
58 facilities that are incidental or appurtenant thereto;

59 "Secretary" means the Secretary of the West Virginia Department of ~~Military Affairs and~~
60 ~~Public Safety~~ Homeland Security and Emergency Management; and

61 "Temporary housing" means a specific work or improvement within this state undertaken
62 primarily to provide dwelling accommodations, including the acquisition, construction or
63 rehabilitation of land, buildings and improvements thereto, for temporary residential shelters or
64 housing for victims of a disaster, and such other nonhousing facilities that are incidental or
65 appurtenant thereto.

§15-5-4b. West Virginia Disaster Recovery Trust Fund disbursement.

1 [Repealed.]

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

1 [Repealed.]

§15-5-24. Disaster Recovery Trust Fund; disbursement of funds.

1 [Repealed.]

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

1 [Repealed.]

§15-5-26. Tax exemption.

1 [Repealed.]

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 31. STATE RESILIENCY AND FLOOD PROTECTION PLAN ACT.

§29-31-1. Short title; legislative findings; purpose.

1 (a) This article may be known and cited as the "Resiliency and Flood Protection Planning
2 Act".

3 (b) The West Virginia Legislature finds that:

4 (1) Flooding has affected each of the 55 counties and 32 major watersheds within the
5 state;

6 (2) Over the past 52 years, more than 282 West Virginians have died in floods;

7 (3) Between January 1996 and January 2017, there ~~have been~~ were 27 federal disaster
8 declarations in West Virginia involving flooding;

9 (4) Between January 2010 and December 2021, West Virginia was impacted by more than
10 1,600 separate flood events; and

11 ~~(4)~~ (5) In June 2016, much of West Virginia suffered devastating flooding.

12 ~~(5)~~ (6) Despite the many state and federal flood protection programs and projects, flooding
13 continues to be West Virginia's most common and widespread natural disaster.

14 (c) It is the purpose of this article to:

15 ~~(1) provide~~ Provide a comprehensive and coordinated statewide resiliency and flood
16 protection planning program to save lives, and develop community and economic resiliency plans

17 including, but not limited to, reducing or mitigating flood damage while supporting economic
18 growth and protecting the environment; and

19 (2) Provide for funding mechanisms to implement such state and community plans
20 developed through the program.

§29-31-2. State Resiliency Office.

1 (a) It is determined that a state authority is required to provide a coordinated effort and
2 planning for ~~emergency and disaster 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 prior to and in the
6 aftermath of an incident. Therefore, the State Resiliency Office is hereby created. The office shall
7 be organized within the Office of the Governor. The office will serve as the recipient of disaster
8 recovery and resiliency funds, excluding federal Stafford Act funds, and the coordinating agency
9 of recovery and resiliency efforts, including matching funds for other disaster recovery programs,
10 excluding those funds and efforts under the direct control of the State Resiliency Officer pursuant
11 to ~~§15-5-4 and §15-5-24~~ §29-31-3, §29-31-6, §29-31-7 and §29-31-8 of this code. ~~for a particular~~
12 ~~event~~

13 (b)(1) The State Resiliency Office Board is also established and shall consist of the
14 following members: The State Resiliency Officer; the Secretary of the Department of Commerce
15 or his or her designee; the Director of the Division of Natural Resources or his or her designee;
16 the Secretary of the Department of Environmental Protection or his or her designee; the Executive
17 Director of the State Conservation Agency or his or her designee; the President of the West
18 Virginia Emergency Management Council or his or her designee; the Secretary of the Department
19 of Health and Human Resources or his or her designee; the Secretary of the Department of
20 Homeland Security or his or her designee; the Secretary of Transportation or his or her designee;
21 the Adjutant General of the West Virginia National Guard or his or her designee; the Director of

22 the Division of Emergency Management within the Department of Homeland Security or his or
23 her designee; two nonvoting members of the West Virginia Senate, one from each party, to be
24 appointed by the President of the Senate; and two nonvoting members of the West Virginia House
25 of Delegates, one from each party, to be appointed by the 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 voting board is a quorum
28 and the concurrence of a board in any matter within their duties is required for its determination.
29 The members of the board may not receive compensation for their services on the committee,
30 but are entitled to reimbursement of expenses, including traveling expenses necessarily incurred
31 in the 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 (1) The State Resiliency Officer shall be the chair of the State Resiliency Office Board and
40 shall be appointed by the Governor with the advice and consent of the Senate. The State
41 Resiliency Officer may cast a vote only in the event of a tie vote. The board shall elect from its
42 voting membership a vice chair. The vice chair shall preside over the meetings of the board in the
43 absence of the chair. In the absence of both the chair and the vice chair any member designated
44 by the members present may act as chair.

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

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

48 (A) At least five years' managerial or strategic planning experience in matters relating to
49 flood control ~~and~~, hazard mitigation, and disaster resiliency, or alternatively, in disaster recovery,
50 emergency management, community and economic development, regional planning, economics,
51 or related public policy field; ~~emergency management, or emergency response~~

52 (B) At least a level IS-800 NIMS certification: *Provided*, That if the State Resiliency Officer
53 does not have a level IS-800 NIMS certification when appointed, he or she shall become so
54 certified within one year following appointment; and

55 (C) Be thoroughly knowledgeable in matters relating to flood control ~~and~~, hazard
56 mitigation, and disaster resiliency, or alternatively, in matters relating to disaster recovery,
57 emergency management, ~~and emergency response~~ community and economic development,
58 regional planning, economics, or related public policy field.

59 (4) The State Resiliency Officer shall employ a deputy who shall assist the State Resiliency
60 Officer in carrying out the duties of the office. The State Resiliency Office Board shall meet and
61 submit a list of no more than five nor less than two of the most qualified persons to the Governor
62 within 90 days of the occurrence of a vacancy in this deputy position. This deputy shall be
63 appointed by the Governor with the advice and consent of the Senate. Applicants for the deputy
64 position shall at a minimum:

65 (A) Have at least three years' managerial or strategic planning experience in matters
66 relating to flood control, hazard mitigation, and disaster resiliency, or alternatively, in disaster
67 recovery, emergency management, community and economic development, regional planning,
68 economics, or related public policy field; ~~in matters relating to flood control and hazard mitigation~~
69 ~~or, alternatively, in disaster recovery, emergency management, or emergency response~~;

70 (B) Have at least a level ~~E/L 950~~ IS 800 NIMS certification: *Provided*, That if the deputy
71 State Resiliency Officer does not have a level ~~E/L 950~~ IS 800 NIMS certification when appointed,
72 he or she shall become so certified within one year following appointment; and

73 (C) Be thoroughly knowledgeable in matters relating to flood control, hazard mitigation,
74 and disaster resiliency, or alternatively, in matters relating to disaster recovery, emergency
75 management, community and economic development, regional planning, economics, or related
76 public policy field. ~~in matters relating to flood control and hazard mitigation, or alternatively, in~~
77 ~~matters relating to disaster recovery, emergency management, and emergency response; and~~

78 (D) ~~If the State Resiliency Officer has his or her primary experience in flood control and~~
79 ~~hazard mitigation then his or her deputy must have experience in disaster recovery, emergency~~
80 ~~management, or emergency response; alternatively, if the State Resiliency Officer has his or her~~
81 ~~primary experience in disaster recovery, emergency management, or emergency response then~~
82 ~~his or her deputy must have experience in flood control and hazard mitigation~~

83 (5) The State Resiliency Officer shall employ additional staff as necessary to assist the
84 State Resiliency Officer in carrying out the duties of the office.

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

90 The board will assist and advise the State Resiliency Officer in developing policies to
91 accomplish, at a minimum, the following specific tasks in order to achieve these goals, and will
92 assist the State Resiliency Officer in devising plans and developing procedures which will ensure
93 that agencies and political subdivisions of the state carry out these following specific tasks:

94 (1) Establish mechanisms to coordinate disaster recovery and resiliency-related programs
95 and activities among state agencies and to encourage intergovernmental as well as cross-sector
96 coordination and collaboration;

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

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

102 (4) Conduct an inventory of relevant critical planned activity by state agencies to determine
103 their proposed impact upon disaster recovery and resiliency;

104 (5) Make recommendations regarding practical steps that can be taken to improve
105 efficiencies, and to pool and leverage resources to improve disaster recovery and resiliency;

106 (6) Identify, prioritize, and evaluate issues affecting implementation of mitigation and
107 adaptation actions, including, but not limited to, the effect of loss of land in context of zoning and
108 other land use regulations, possible conflicts between public hazard mitigation/adaptation
109 planning and private property interests (e.g. buy-out programs, projects to increase flood storage),
110 develop guidance for cities and towns, real estate professionals, property owners under existing
111 law and regulations; and develop proposals for changes in laws, policies, and regulations, as
112 needed;

113 (7) Ensure all counties and municipalities have up-to-date Hazard Mitigation Plans and
114 Local Comprehensive Disaster Plans that are consistent with, and coordinated to, the state's
115 Hazard Mitigation Plans ~~and~~, Comprehensive Disaster Plans, and the state's Flood Resiliency
116 Plan; including, but not limited to, assisting them in developing planning guidance for cities and
117 towns to complete and/or update Hazard Mitigation Plans; providing technical assistance to help
118 counties and municipalities meet these standards; and provide notice to counties and
119 municipalities of funding opportunities to implement projects outlined in their Hazard Mitigation
120 Plans;

121 (8) Conduct risk assessments, including, but not limited to, examining state highway
122 corridors and associated drainage systems for stormwater inundation, impacts of downed trees,

123 effects on utilities, etc.; assessment of known stormwater impacts between state highways and
124 municipal drainage systems, options to eliminate or mitigate such impact; a housing vulnerability
125 assessment for structures in riparian zones; a vulnerability assessment of critical infrastructure at
126 the state and municipal levels including hospitals, schools, fire stations, etc., and a vulnerability
127 assessment of the state's historic and cultural resources;

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

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

137 (11) ~~Establish a model~~ Lead long-term recovery plan planning efforts on behalf of the state
138 in the event of the proclamation of the existence of a state of emergency due to a natural hazards
139 event, or upon a Presidential declaration of a major disaster under Section 406 of the Stafford
140 Act. that would be activated after catastrophic events

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

142 (e) The State Resiliency Office shall provide adequate staff from that office to ensure the
143 meetings of the board are facilitated, board meeting minutes are taken, records and
144 correspondence kept, and that reports of the board are produced in a timely manner.

145 (f) Notwithstanding any other provisions of this code:

146 (1) The meetings of the board are not subject to the provisions of §6-9A-1 *et seq.* of this
147 code.

148 (2) The following are exempt from public disclosure under the provisions of §29B-1-1 *et*
149 *seq.* of this code:

150 (A) All deliberations of the board;

151 (B) The materials, in any medium, including hard copy and electronic, placed in the
152 custody of the board as a result of any of its duties; and

153 (C) All records of the board, in the possession of the board, and generated by the board,
154 due to their falling under several exceptions to public disclosure including, but not limited to, that
155 for security or disaster recovery plans and risk assessments.

§29-31-2a. Definitions.

1 As used in this article:

2 "Board" means the West Virginia State Resiliency Office Board created by this article;

3 "Code" means the Code of West Virginia, 1931, as amended;

4 "Community facilities" means a specific work, or improvement within this state or a specific
5 item of equipment or tangible personal property owned or operated by any political subdivision or
6 nonprofit corporation and used within this state to provide any essential service to the general
7 public;

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

13 "Disaster recovery activities" means activities undertaken following a disaster to provide,
14 or to participate in, the provision of long-term rehabilitation of infrastructure, housing, community
15 facilities, and economic activity impacted by a disaster event;

16 "Flood Fund" means the West Virginia Flood Resiliency Trust Fund created by this article;

17 "Flood prevention or protection study" means the conduct of a hydraulic or hydrologic
18 study of a flood plain with historic and predicted future floods, the assessment of current and
19 projected future flood risk, and the development of strategies to prevent or mitigate damage from
20 flash or riverine flooding;

21 "Flood resiliency" means efforts and activities intended to minimize damages during times
22 of flooding resulting in reduced risk to people and infrastructure, and ensuring there is ample room
23 for flooding and river adjustment to occur where the opportunity may exist;

24 "Low-income geographic area" means any locality, or community within a locality, that has
25 a median household income that is not greater than 80 percent of the local median household
26 income, or any area in the state designated as a qualified opportunity zone by the U.S. Secretary
27 of the Treasury via his delegation of authority to the Internal Revenue Service;

28 "Low-income household" means any household whose income does not exceed 80
29 percent of the local median household income;

30 "Nature-based solution" means sustainable planning, design, environmental
31 management, and engineering practices that weave natural features or processes into the built
32 environment to promote flood resiliency and preserve or enhance natural hydrologic function;

33 "Person" means any individual, corporation, voluntary organization or entity, partnership,
34 firm, or other association, organization, or entity organized or existing under the laws of this or
35 any other state or country;

36 "Political subdivision" means any county or municipal corporation in this state;

37 "Recovery Fund" means the West Virginia Disaster Recovery Trust Fund created by this
38 article; and,

39 "Stafford Act" means the Robert T. Stafford Disaster Relief and Emergency Assistance
40 Act (42 U.S.C. Chapter 68).

§29-31-3. Authority of State Resiliency Office and State Resiliency Officer.

1 The State Resiliency Office will coordinate the state’s disaster ~~response~~ recovery and
2 resiliency missions and the State Resiliency Officer serves as the primary representative of the
3 Governor in these matters. The State Resiliency Officer shall, upon the order and direction of the
4 Governor, act on behalf of the Governor in the event of the proclamation of the existence of a
5 state of emergency or state of preparedness due to a natural hazards event or ~~state of~~
6 ~~preparedness under the provisions of §15-5-6 of this code~~ upon a Presidential declaration of a
7 major disaster under Section 406 of the Stafford Act. The State Resiliency Officer will assist and
8 advise the Governor on all disaster ~~response~~ recovery and resiliency issues and serve as a liaison
9 between the Governor’s office, and all other parties, whether state, federal, public, or private to
10 further the purposes of this article. The State Resiliency Officer will:

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

14 (2) Develop a new state Flood Resiliency Plan due to the Board no later than June 30,
15 2024;

16 ~~(2)(3) Coordinate~~ an annual review of the state ~~flood protection plan~~ Flood Resiliency Plan
17 and update the plan no less than ~~biannually~~ biennially, with updates due to the board no later than
18 June 30 in odd-numbered years;

19 ~~(3)(4)~~ Recommend legislation to reduce or mitigate flood damage;

20 ~~(4)(5)~~ Report to the Joint Legislative Committee on Flooding at least quarterly;

21 ~~(5)(6)~~ Catalog, maintain, and monitor a listing of current and proposed capital expenditures
22 to reduce or mitigate flood damage and other hazards, and other useful and desirable resiliency
23 efforts;

24 ~~(6)(7)~~ Coordinate planning of flood projects with federal agencies;

25 ~~(7)(8)~~ Improve professional management of flood plains;

26 ~~(8)(9)~~ Provide education and outreach on flooding issues to the citizens of this state;

- 27 ~~(9)~~(10) Establish a single website integrating all agency flood information;
- 28 ~~(40)~~(11) Monitor federal funds and initiatives that become available for disaster recovery
29 and economic and community resiliency or other flood or hazard mitigation, and to direct
30 expenditures on behalf of the Governor;
- 31 ~~(44)~~(12) Pursue additional funds and resources to assist not only with long-term recovery
32 efforts but also long-term community and statewide resiliency efforts;
- 33 ~~(42)~~(13) Coordinate, integrate, and expand planning efforts in the state for hazard
34 mitigation, long-term disaster recovery, and economic diversification;
- 35 ~~(43)~~(14) Coordinate long-term disaster recovery efforts in response to disasters as they
36 occur;
- 37 ~~(44)~~(15) Establish and facilitate regular communication between federal, state, local, and
38 private sector agencies, and organizations to further economic and disaster resilience;
- 39 ~~(45)~~(16) Receive resources, monetary or otherwise, from any other governmental entity
40 and disburse those resources to effectuate the purposes of this article;
- 41 ~~(46)~~(17) Execute cooperative agreements, where appropriate, between the State
42 Resiliency Office and the federal and/or state governments;
- 43 ~~(47)~~(18) Contract, where appropriate, on behalf of the State Resiliency Office, with the
44 federal government, its instrumentalities and agencies, any state, territory or the District of
45 Columbia, and its agencies and instrumentalities, municipalities, foreign governments, public
46 bodies, private corporations, partnerships, associations, and individuals;
- 47 ~~(48)~~(19) Use funds administered by the State Resiliency Office for the maintenance,
48 construction, or reconstruction of capital repair and replacement items as necessary to effectuate
49 the purposes of this article;
- 50 ~~(49)~~(20) Accept and use funds from the federal government, its instrumentalities and
51 agencies, any state, territory or the District of Columbia, and its agencies and instrumentalities,
52 municipalities, foreign governments, public bodies, private corporations, partnerships,

53 associations, and individuals for the purposes of disaster recovery, hazard mitigation, flood
54 mitigation, flood prevention, and disaster response programs;

55 ~~(20)~~(21) Hire necessary employees at an appropriate salary equivalent to a competitive
56 wage rate;

57 ~~(24)~~(22) Enroll appropriate employees in PERS, PEIA, and workers' compensation and
58 unemployment programs, or their equivalents: *Provided*, That the State Resiliency Office, through
59 the receipt of federal and/or state funds, pays the required employer contributions;

60 ~~(22)~~(23) Develop a human resources division that will administer and manage its
61 employees and receive state matching funds as necessary to ensure maximum federal funds are
62 secured;

63 ~~(23)~~(24) Have the ability to secure all other bonding, insurance, or other liability protections
64 necessary for its employees to fulfill their duties and responsibilities;

65 ~~(24)~~(25) Have the ability to draw upon other departments, divisions, agencies, and all other
66 subdivisions of the state for research and input in fulfilling the requirements of this article, and its
67 requests are to have priority over other such requests;

68 ~~(25)~~(26) Participate in the interdepartmental transfer of permanent state employees, as if
69 he or she were a department secretary, under the provisions of §5F-2-7 of this code.

70 ~~(26)~~(27) Notwithstanding any other provision of this code to the contrary, acquire legal
71 services that are necessary, including representation of the board, its employees, and officers
72 before any court or administrative body from the office of the Attorney General, who shall provide
73 such legal assistance and representation, and

74 ~~(27)~~(28) Take all other actions necessary and proper to effectuate the purposes of this
75 article.

76 The office shall have any other additional authority, duties, and responsibilities as
77 prescribed by the Governor to effectuate the purposes of this article. Due to the at-will employment

78 relationship with the office, its employees may not avail themselves of the state grievance
79 procedure as set forth in §6C-2-1 *et seq.* of this code.

§29-31-6. West Virginia Disaster Recovery Trust Fund.

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 State Resiliency
3 Officer. The recovery fund shall consist of: (1) Any appropriations, grants, gifts, contributions, or
4 revenues received by the recovery fund from any source, public or private; and (2) all income
5 earned on moneys, properties, and assets held in the Recovery Fund. When any funds are
6 received by the State Resiliency Officer from any source for the purpose of disaster recovery,
7 they shall be paid into the Recovery Fund, and shall be disbursed and otherwise managed in the
8 manner set forth in this article. The Recovery Fund shall be treated by the Auditor and Treasurer
9 as a special 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
11 Disaster Recovery Trust Fund shall be held by it in trust for the purposes of carrying out its powers
12 and 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 Governor, the State Resiliency Officer, on behalf of and authorized by the Governor, or as set
16 forth in §29-31-7a and §29-31-8b of this code. If no need exists for immediate use or
17 disbursement, moneys, properties, and assets in the Recovery Fund shall be invested or
18 reinvested by the State Resiliency Officer as provided in this article.

§29-31-7. West Virginia Disaster Recovery Trust Fund disbursement.

1 Upon the proclamation of the existence of a state of emergency due to a natural hazards
2 event under the provisions of §15-5-6 of this code or upon a Presidential declaration of a major
3 disaster under Section 406 of the Stafford Act, the State Resiliency Officer, shall have the power
4 to disburse funds from the Disaster Recovery Trust Fund created pursuant to §29-31-6 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 State Resiliency Officer may
7 determine is necessary or appropriate in order to provide assistance to any person, political
8 subdivision, or local organization for recovering from the disaster, or otherwise involved in disaster
9 recovery activities: *Provided*, That except as provided hereafter in this section, requisitions for
10 payment shall not be made or authorized for payment by the Auditor without the express approval
11 of the State Resiliency Officer: *Provided, however*, That all disbursements arising out of the
12 events surrounding the aftermath of a disaster event giving rise to the relevant disbursements
13 shall require the express approval of the State Resiliency Officer, which approval shall not be
14 unduly withheld or delayed.

15 In the occurrence of a qualifying event granting the State Resiliency Officer the power to
16 disburse funds from the Disaster Recovery Trust Fund, the following provisions and conditions
17 shall be adhered to:

18 (1) Disbursements shall be prioritized to the benefit of low-income geographic areas, and
19 not less than 50 percent of all funds disbursed through the Disaster Recovery Trust Fund following
20 any particular disaster event shall be disbursed to the benefit of low-income geographic areas,
21 low-income households, or to local organizations conducting disaster recovery activities to the
22 benefit of low-income geographic areas or low-income households;

23 (2) Disbursements to the benefit of a political subdivision may only be allowed upon the
24 verification to the State Resiliency Officer that the recipient political subdivision has adopted, or
25 will adopt within 24 months, the following programs or measures or risk forfeiture of future funding
26 opportunities:

27 (A) Town road and bridge standards consistent with or exceeding those listed under the
28 most current version of standards published by the West Virginia Department of Transportation;

29 (B) A flood hazard bylaw, or an adopted interim flood hazard bylaw as an intermediary
30 step to secure enrollment and participation in the National Flood Insurance Program (NFIP), if
31 applicable;

32 (C) A local Hazard Mitigation Plan that meets the provisions of 44 CFR § 201.6 that has
33 been approved by the local community and is approved or in the process of securing final approval
34 by FEMA. The local mitigation plan may be part of a larger multijurisdictional or regional mitigation
35 plan;

36 (D) Adoption of a local Emergency Operations Plan (EOP) in accordance with State
37 standards; and

38 (E) Attainment of an active rate classification (class #1 through #9) under FEMA's
39 Community Rating System (CRS) that includes activities that prohibit new structures in mapped
40 flood hazard zones.

41 (3) Disbursements may be further prioritized or conditioned at the discretion of the State
42 Resiliency Officer and upon approval of the State Resiliency Office Board.

§29-31-8. Powers and duties related to the West Virginia Disaster Recovery Trust Fund.

1 The 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 §29-31-7 of this
3 code. The 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 recovering from a disaster,
7 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 Recovery
17 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 provide financial assistance to state and local governmental entities for the
21 nonfederal share for federal disaster assistance programs;
- 22 (10) To provide for financial assistance to homeowners and communities that are not
23 eligible for Community Development Block Grant-Disaster Recovery and other federal funding
24 assistance;
- 25 (11) To provide loans and grants to local governments in disaster areas that need
26 immediate cash flow assistance;
- 27 (12) To provide grants to governmental entities and organizations exempt from federal
28 income tax under Section 501(c)(3) of the Internal Revenue Code to repair or replace
29 infrastructure or equipment damaged as a result of a natural disaster;
- 30 (13) To provide financial assistance for verifiable losses of agricultural commodities due
31 to a natural disaster; and
- 32 (14) Do all acts necessary and proper to carry out the powers granted to the State
33 Resiliency Office within its disaster recovery mission.

§29-31-9. Capitalization of the West Virginia Disaster Recovery Trust Fund.

- 1 (a) The West Virginia Disaster Recovery Trust Fund may be granted an initial one-time
2 allocation of \$10 million in state general funds for the purposes outlined in this article;

3 (b) The State Resiliency Officer shall, with the concurrence of the State Auditor, present
4 an expenditure report to the State Resiliency Office Board by no later than December 1 annually;

5 (c) Upon review and verification by the State Resiliency Office Board that all expenditures
6 within the West Virginia Disaster Recovery Trust Fund expenditure report are valid and justified
7 uses of Recovery Fund resources, the State Resiliency Office Board shall submit to the Governor
8 by no later than December 31 annually a budget and may request to replenish the Recovery Fund
9 up to its initial \$10 million capitalization.

§29-31-10. West Virginia Flood Resiliency Trust Fund.

1 (a) There is hereby created a special trust fund which shall be designated and known as
2 the West Virginia Flood Resiliency Trust Fund to be administered by the State Resiliency Officer.
3 The Flood Fund shall consist of: (i) Any appropriations, grants, gifts, contributions, or revenues
4 received by the Flood Fund from any source, public or private; and (ii) all income earned on
5 moneys, properties, and assets held in the Flood Fund. When any funds are received by the State
6 Resiliency Officer from any source for flood resiliency activities, they shall be paid into the Flood
7 Fund, and shall be disbursed and otherwise managed in the manner set forth in this article. The
8 Flood Fund shall be treated by the Auditor and Treasurer as a special revenue fund and not as
9 part of the general revenues of the state.

10 (b) All moneys, properties, and assets acquired by the State of West Virginia in the Flood
11 Fund shall be held by it in trust for the purposes of carrying out its powers and duties and shall be
12 used and reused in accordance with the purposes and provisions of this article. Such moneys,
13 properties, and assets shall at no time be commingled with other public funds. Disbursements
14 from the Flood Fund shall be made only upon the written requisition of the Governor, the State
15 Resiliency Officer, on behalf of and authorized by the Governor, or as set forth in this article.

§29-31-11. West Virginia Flood Resiliency Trust Fund disbursement.

1 Upon the development of a new state Flood Resiliency Plan, the State Resiliency Officer
2 shall have the power to disburse funds from the Flood Fund for the purposes of implementing the

3 Flood Resiliency Plan to any person, political subdivision, or local organization in such amounts
4 and in such manner, and to take such other actions, as the State Resiliency Officer may determine
5 is necessary or appropriate and is outlined within the Flood Resiliency Plan. All assistance to any
6 person, political subdivision, or local organization shall be for the purposes of building flood
7 resiliency in the face of current and projected future flood disaster events: *Provided, That except*
8 as provided hereafter in this section, requisitions for payment shall not be made or authorized for
9 payment by the Auditor without the express approval of the State Resiliency Officer: *Provided,*
10 *however,* That all disbursements shall require the express approval of the State Resiliency Officer,
11 which approval shall be contingent on the proposed activity appearing as a valid proposed flood
12 resiliency activity and prioritized for implementation within the most recent Flood Resiliency Plan
13 as reviewed and approved by the State Resiliency Office Board.

14 Following the development and approval of a new state Flood Resiliency Plan, the State
15 Resiliency Officer is granted the power to disburse funds from the Flood Resiliency Trust Fund.
16 In accordance with these powers, the following provisions and conditions shall be adhered to:

17 (1) Disbursements from the Flood Fund shall be used solely for the purposes of enhancing
18 flood prevention or protection as required by this article. The State Resiliency Office shall manage
19 the Flood Fund and may disburse from the Flood Fund its reasonable costs and expenses
20 incurred in the management of the Flood Fund.

21 (2) Disbursements shall be prioritized to the benefit of low-income geographic areas, and
22 not less than 50 percent of all funds disbursed through the Flood Resiliency Trust Fund shall be
23 disbursed to the benefit of low-income geographic areas and low-income households;

24 (3) Disbursements shall be prioritized toward the implementation of nature-based
25 solutions, and not less than 50 percent of all funds disbursed through the Flood Resiliency Trust
26 Fund shall be disbursed to implement nature-based solutions;

27 (A) Of disbursements made to implement nature-based solutions, not less than 25 percent
28 of these disbursements shall be utilized for the acquisition of single-family primary residences and

29 multifamily residences in areas currently or projected to be subjected to significant flood impacts,
30 assistance to residents relocating outside of the floodplain, and floodplain restoration activities on
31 properties acquired through the Flood Fund; and

32 (B) Properties acquired through the Flood Fund are returned to open space and all future
33 development on acquired parcels is prohibited in perpetuity through easement or restrictive
34 covenant: *Provided*, That development activities are not related to floodplain restoration and
35 enhancement.

36 (4) Disbursements to the benefit of a political subdivision may only be allowed upon the
37 verification to the State Resiliency Officer that the recipient political subdivision has adopted, or
38 will adopt within 24 months, the following programs or measures:

39 (A) Town road and bridge standards consistent with or exceeding those listed under the
40 most current version of standards published by the West Virginia Department of Transportation;

41 (B) A flood hazard bylaw, or an adopted interim flood hazard bylaw as an intermediary
42 step to secure enrollment and participation in the National Flood Insurance Program (NFIP), if
43 applicable;

44 (C) A local Hazard Mitigation Plan that meets the provisions of 44 CFR § 201.6 that has
45 been approved by the local community, and is approved or in the process of securing final
46 approval by FEMA. The local mitigation plan may be part of a larger multijurisdictional or regional
47 mitigation plan;

48 (D) Adoption of a local Emergency Operations Plan (EOP) in accordance with state
49 standards; and,

50 (E) Attainment of an active rate classification (class #1 through #9) under FEMA's
51 Community Rating System (CRS) that includes activities that prohibit new structures in mapped
52 flood hazard zones.

53 (5) Prioritization and conditions for disbursements at the discretion of the State Resiliency
54 Officer and upon approval of the State Resiliency Office Board.

§29-31-12. Powers and duties related to the West Virginia Flood Resiliency Trust Fund.

1 The 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 §29-31-2 of this
3 code. The 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 Flood Fund, and to use or dispose of the same to provide assistance
6 to any person, political subdivision, or local organization for flood resiliency, flood prevention, and
7 flood protection 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 Flood Resiliency
17 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 procure services related to the development and updating of the state Flood
21 Resiliency Plan;

22 (10) To provide grants to political subdivisions and individual beneficiaries for the purpose
23 of implementing activities proposed and outlined within the Flood Resiliency Plan;

24 (11) To provide grants to governmental entities and organizations exempt from federal
25 income tax under Section 501(c)(3) of the Internal Revenue Code for the purpose of implementing
26 activities proposed and outlined within the Flood Resiliency Plan;

27 (12) To provide grants to political subdivisions for the purpose of conducting flood
28 prevention and protection studies in areas that are subject to recurrent flooding as confirmed by
29 a locality-certified floodplain manager; and

30 (13) Do all acts necessary and proper to carry out the powers granted to the State
31 Resiliency Office for flood resiliency activities.

§29-31-13. Capitalization of the West Virginia Flood Resiliency Trust Fund.

1 (a) The West Virginia Flood Resiliency Trust Fund may be granted an initial one-time
2 allocation of \$40 million in state general funds for the purposes outlined in this article;

3 (b) The State Resiliency Officer shall, with the concurrence of the State Auditor, present
4 an expenditure report to the State Resiliency Office Board by no later than December 1 annually;

5 (c) Upon review and verification by the State Resiliency Office Board that all expenditures
6 within the West Virginia Flood Resiliency Trust Fund expenditure report are valid and justified
7 uses of Flood Fund resources, the State Resiliency Office Board shall submit to the Governor by
8 no later than December 31 annually a budget and may request to replenish the Flood Fund up to
9 its initial \$40 million capitalization;

10 (d) Upon state receipt of Community Development Block Grant-Disaster Recovery funds
11 in relation to a flood disaster event, no less than 25 percent of grant resources shall be deposited
12 into the Flood Fund for the purposes of Flood Resiliency Plan development and implementation
13 activities. This sum shall be deposited to the Flood Fund regardless of whether the capitalization
14 of the Flood Fund exceeds its initial capitalization sum at the time the state is granted Community
15 Development Block Grant-Disaster Recovery funds in relation to a flood disaster event.

§29-31-14. Prohibition on funds inuring to the benefit of or being distributable to members, officers, or private persons.

1 No portion of either the Recovery Fund or the Flood Fund shall inure to the benefit of, or
2 be distributable to, members of the board or other private persons except that the board shall be
3 authorized to advise and recommend to the State Resiliency Officer to make loans or grants and
4 exercise its other powers as specified in this article in furtherance of its purpose: *Provided, That*
5 no such loans or grants shall be made to, and no property shall be purchased or leased from, or
6 sold, leased or otherwise disposed of, to any member or officer of the board except as provided
7 under §6B-2-5d of this code.

§29-31-15. Tax exemption.

1 The State Resiliency Officer shall not be required to pay any taxes and assessments to
2 the state or any political subdivision of the state upon any of its moneys, properties, or assets or
3 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 into the West Virginia
5 Disaster Recovery Trust Fund or the West Virginia Disaster Resiliency Trust Fund.