

# **WEST VIRGINIA LEGISLATURE**

## **2025 REGULAR SESSION**

### **Introduced**

## **House Bill 3091**

**FISCAL  
NOTE**

By Delegates Ridenour, Steele, Phillips, Masters,  
Hillenbrand, Foggin, Dillon, D. Cannon, Mazzocchi,  
and Martin

[Introduced ; referred  
to the Committee on the ]

1 A BILL to amend and reenact §15-4-1, §15-4-2, §15-4-3, §15-4-4, §15-4-5, §15-4-6, §15-4-7, §15-  
2 4-8, §15-4-9, §15-4-10, §15-4-11, §15-4-12, and §15-4-13 of the Code of West Virginia,  
3 1931, as amended; and to amend the code by adding three new sections, designated §15-  
4 4-14, §15-4-15, and §15-4-16, relating to updating and revising all provisions of this code  
5 relating to the West Virginia State Guard.

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

**ARTICLE 4. WEST VIRGINIA STATE GUARD.**

**§15-4-1. Governor authorized to organize and maintain West Virginia state guard Findings.**

1 ~~Whenever any part of the National Guard of this state is in active federal service, the~~  
2 ~~Governor is hereby authorized to organize and maintain within this state during such period, under~~  
3 ~~such regulations as the secretary of defense of the United States may prescribe for discipline in~~  
4 ~~training, such military forces as the Governor may deem necessary to defend this state. Such~~  
5 ~~forces shall be composed of officers commissioned or assigned, and such able-bodied male~~  
6 ~~citizens of the state as shall volunteer for service therein, supplemented, if necessary, by men of~~  
7 ~~the reserve militia enrolled by draft or otherwise as provided by law. Such forces shall be additional~~  
8 ~~to and distinct from the National Guard and shall be known as the "West Virginia state guard":~~  
9 ~~Provided, That any funds appropriated by the Legislature to the Adjutant General for the~~  
10 ~~organization, administration, training and supply of the organized militia may be expended for~~  
11 ~~such purposes with respect to the West Virginia state guard. Such forces shall be uniformed~~

12 (a) Legislative Findings - The State of West Virginia finds that:

13 (1) The Second Amendment to the Constitution of the United States asserts that the militia  
14 must be well regulated.

15 (2) A State Defense Force is authorized under Federal law 32 U.S.C. §109.

16 (3) Due to the potential for military conflicts involving the United States and the possible  
17 deployment of the West Virginia National Guard, including many West Virginia members of law  
18 enforcement, other security personnel, firefighters and emergency medical services, the State of

19 West Virginia shall form a State Guard to provide security for the state and respond to crises.

**§15-4-2. Rules and regulations Governor directed to organize and maintain the West Virginia State Guard.**

1 ~~The Governor is hereby authorized to prescribe rules and regulations not inconsistent with~~  
2 ~~the provisions of this article governing the enlistment, organization, administration, equipment,~~  
3 ~~maintenance, training and discipline of such forces: *Provided*, That such rules and regulations,~~  
4 ~~insofar as he deems practicable and desirable, shall conform to existing law governing and~~  
5 ~~pertaining to the National Guard and the rules and regulations promulgated thereunder, and shall~~  
6 ~~prohibit the acceptance of gifts, donations, gratuities or anything of value by such forces or by any~~  
7 ~~member of such forces from any individual, firm, association, or corporation by reason of such~~  
8 ~~membership~~

9 The Governor is hereby directed to organize and maintain a State Guard no later than  
10 September 1, 2025, to defend this state, respond to crises (particularly natural disasters and other  
11 declared emergencies), maintain order during crises and civil disturbance, and provide civil  
12 defense. These forces shall:

13 (1) Be composed of officers commissioned or assigned, and such able-bodied male or  
14 female citizens of the United States, over 16 years of age, as shall volunteer for service therein,  
15 supplemented, if necessary, by men or women of the reserve militia enrolled by draft or otherwise  
16 as provided by law.

17 (2) Be in addition to and distinct from the National Guard and shall be known as the "West  
18 Virginia State Guard": *Provided*, That the Adjutant General shall prepare an annual budget for the  
19 estimated annual pay and allowances and operating expenses of the West Virginia State Guard,  
20 and a budgetary line item fund shall be designated in the state budget for the West Virginia State  
21 Guard and: *Provided, however*, That any funds appropriated by the Legislature to the Adjutant  
22 General for the organization, administration, training and supply of the West Virginia State Guard's  
23 organized militia may be expended solely for those purposes with respect to the West Virginia

State Guard. Any unused monies in the West Virginia State Guard Fund remaining at the conclusion of any fiscal year shall carry forward into the next year's West Virginia State Guard Fund, and the Legislature may in its discretion consider the West Virginia State Guard Fund existing balance in its future annual appropriations.

(3) The State Guard shall consist of five regiments, organized regionally, each having:

(A) A headquarters company, including medical elements staffed by volunteer auxiliaries.

(B) Two – five battalions each organized for regional response.

(C) A reconnaissance company.

(D) An engineer company, comprised of volunteer engineering elements, including engineering equipment from local businesses and government entities.

(4) Each battalion shall consist of:

(A) A headquarters company, including medical elements.

(B) Three - five companies, with two - four platoons each.

(C) Each platoon shall have 25-45 members.

(D) At least one company shall be formed in each county.

(5) Units shall focus on light infantry missions, crisis response (particularly responses to natural disasters), civil disturbance, and civil defense (particularly responses to mass casualty events).

(6) Monthly training shall consist of 12 hours per month, with at least one eight-hour block training period.

(A) The Adjutant General is responsible for organization and training to accomplish assigned missions and administration of the State Guard, and shall use existing resources and State Guard volunteer auxiliaries to accomplish these tasks.

(B) Basic training for new recruits shall be accomplished at the regiment/battalion-level.

(C) Training may be in conjunction with other entities, including elements of the National Guard, county sheriffs, fire departments, medical response elements, and emergency

50 management agencies.

51 (7) Regiments report to the Adjutant General for military and civil disturbance training,  
52 issues, and missions.

53 (8) When requested by the Adjutant General, the Legislature may appropriate funds for the  
54 support and operation of the State Guard, including a pay and allowances fund managed by the  
55 Adjutant General. The Adjutant General shall initially request funds to purchase equipment  
56 deemed necessary to commence organizing the State Guard, including tactical communications  
57 equipment to facilitate command and control from regiment down to company levels, and other  
58 equipment deemed necessary.

59 (9) Battalions and companies shall report to their respective regiments/battalions for  
60 military issues and missions, and to their respective county commissions or county sheriffs for  
61 crisis response, civil disturbance and civil defense issues and missions.

**§15-4-3. Pay and allowances Rules and Regulations.**

1 ~~The pay for officers and enlisted men of the West Virginia state guard for service at camps~~  
2 ~~of instruction, rifle practice, practice marches and maneuvers, or other duties ordered by the~~  
3 ~~Governor, shall be such as are provided in the National Defense Act or amendments thereto.~~  
4 ~~Officers and enlisted men, when employed in the actual service of the state, as defined and~~  
5 ~~provided in this article, beginning on the day they assembled at their armories or other designated~~  
6 ~~places, until the day they have returned thereto and been properly relieved, inclusive, fractional~~  
7 ~~parts of a day counting as a full day, shall receive the same pay and allowances as provided for~~  
8 ~~officers and enlisted men in the West Virginia National Guard~~

9 The Governor is hereby authorized to prescribe rules and regulations not inconsistent with  
10 the provisions of this article governing the enlistment, organization, administration, equipment,  
11 maintenance, training and discipline of these forces: *Provided*, That the rules and regulations,  
12 insofar as the Governor considers practicable and desirable, shall conform to existing law  
13 governing and pertaining to the National Guard, and the rules and regulations promulgated

14 thereunder. The federal Uniform Code of Military Justice (UCMJ) shall govern overall discipline.

**§15-4-4. Arms and equipment; use of state armories, etc Pay and Allowances.**

1 ~~For use of such forces, the Governor is hereby authorized to requisition from the secretary~~  
2 ~~of war such arms and equipment as may be in possession of and can be spared by the war~~  
3 ~~department; and to make available to such forces the facilities of state armories and their~~  
4 ~~equipment and such other state premises and property as may be available~~

5 Officers and enlisted members of the West Virginia State Guard may receive no direct  
6 compensation for service at camps of instruction, rifle practice, training marches and maneuvers,  
7 or other duties, except when called to active service of the state by the Governor, county  
8 commissions or county sheriffs. Officers and enlisted men or women, when called to active service  
9 of the state, as defined, and provided in this article, beginning on the day they assembled at their  
10 armories or other designated places, until the day they have returned thereto and been properly  
11 relieved, inclusive, fractional parts of a day counting as a full day, shall receive the same pay and  
12 allowances as provided for officers and enlisted men or women in the West Virginia National  
13 Guard. The Adjutant General shall establish a pay and allowances fund to support activation of the  
14 State Guard.

**§15-4-5. Service limited to state, except as to fresh pursuit; apprehension of persons in**  
**another state Arms and equipment; use of state armories, etc.**

1 ~~Such forces shall not be required to serve outside the boundaries of this state. Except that~~  
2 ~~any organization, unit or detachment of such forces, upon order of the officer in immediate~~  
3 ~~command thereof, may continue in fresh pursuit of insurrectionists, saboteurs, enemies or enemy~~  
4 ~~forces beyond the borders of this state into another state until they are apprehended or captured~~  
5 ~~by such organization, unit or detachment or until the military or police forces of the other state or~~  
6 ~~the forces of the United States have had a reasonable opportunity to take up the pursuit or~~  
7 ~~apprehend or capture such persons: *Provided*, That such other state shall have given authority by~~  
8 ~~law for such pursuit by such forces of this state. Any such person who shall be apprehended or~~

9 ~~captured in such other state by an organization, unit or detachment of the forces of this state shall~~  
10 ~~without unnecessary delay be surrendered to the military or police forces of the state in which he is~~  
11 ~~taken or to the United States, but such surrender shall not constitute a waiver by this state of its~~  
12 ~~right to extradite or prosecute such person for any crime committed in this state~~

13 (a) For use of these forces, the Governor may requisition or obtain such arms and  
14 equipment from the United States Department of Defense as may be necessary to properly equip  
15 the State Guard; and to make available to the forces the facilities of state armories and their  
16 equipment and such other state premises and property as may be available.

17 (b) State Guard members shall muster with their own personal firearms and equipment:  
18 Provided, That these firearms shall be semi-automatic battle rifles in 5.56 or .308 caliber, are  
19 properly maintained and in good serviceable condition. Other caliber rifles may be considered by  
20 battalion commanders for limited use. State Guard members shall be able to muster with their  
21 weapon, fully serviceable military equipment, including uniform, helmet, load-bearing equipment,  
22 pack and boots, and sufficient rounds of 5.56 or .308 caliber State Guard-approved ammunition.  
23 State Guard members must also maintain sufficient additional 5.56 or .308 caliber ammunition  
24 available for use at all times, as determined by the Adjutant General.

25 (c) Equipment and clothing shall be fully serviceable military uniforms and equipment.  
26 State Guard members shall wear serviceable field uniforms of the U.S. armed forces in use since  
27 1990.

**§15-4-6. Pursuit and apprehension of certain persons in this state by military forces of**  
**another state Service limited to state, except as to fresh pursuit; apprehension of**  
**persons in another state.**

1 ~~Any military forces or organization, unit or detachment thereof, of another state, who are in~~  
2 ~~fresh pursuit of insurrectionists, saboteurs, enemies or enemy forces, may continue such pursuit~~  
3 ~~into this state until the military or police forces of this state or the forces of the United States have~~  
4 ~~had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons and~~

are hereby authorized to arrest or capture such persons within this state while in fresh pursuit. Any such person who shall be captured or arrested by the military forces of such other state while in this state shall, without unnecessary delay, be surrendered to the military or police forces of this state to be dealt with according to law. This section shall not be construed so as to make unlawful any arrest in this state which would otherwise be lawful, and nothing contained in this section shall be deemed to repeal any of the provisions of the uniform act on the fresh pursuit of criminals

These forces may not be required to serve outside the boundaries of this state. Except that any organization, unit or detachment of these forces, upon order of the officer in immediate command thereof, may continue in fresh pursuit of insurrectionists, saboteurs, enemies or enemy forces beyond the borders of this state into another state until they are apprehended or captured by such organization, unit or detachment or until the military or police forces of the other state or the forces of the United States have had a reasonable opportunity to take up the pursuit or apprehend or capture such persons: *Provided*, That the other state has authority by law for pursuit by the forces of this state. Any person who is apprehended or captured in another state by an organization, unit or detachment of the forces of this state shall without unnecessary delay be surrendered to the military or police forces of the state in which he or she is taken or to the United States, but the surrender may not constitute a waiver by this state of its right to extradite or prosecute that person for any crime committed in this state.

**§15-4-7. Status of forces and members thereof with regard to federal service Pursuit and apprehension of certain persons in this state by military forces of another state.**

~~Nothing in this article shall be construed as authorizing such forces, or any part thereof, to be called, ordered or in any manner drafted as such, into the military service of the United States, but no person shall by reason of his or her enlistment or commission in any such forces be exempted from military service under any law of the United States~~

Any military forces or organization, unit or detachment thereof, of another state, who are in fresh pursuit of insurrectionists, saboteurs, enemies or enemy forces, may continue the pursuit

7 into this state until the military or police forces of this state or the forces of the United States have  
8 had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons and  
9 are hereby authorized to arrest or capture such persons within this state while in fresh pursuit. Any  
10 such person who shall be captured or arrested by the military forces of such other state while in  
11 this state shall, without unnecessary delay, be surrendered to the military or police forces of this  
12 state to be dealt with according to law. This section may not be construed so as to make unlawful  
13 any arrest in this state which would otherwise be lawful, and nothing contained in this section shall  
14 be deemed to repeal any of the provisions of the uniform act on the fresh pursuit of criminals. The  
15 Governor may, upon declaration, declare provisions of this section to be temporarily superseded  
16 for a specified period of time.

**§15-4-8. Civil organizations, etc., not to be enlisted as unit** **Status of forces and members**  
**thereof with regard to federal service.**

1 ~~No civil organization, society, club, post, order, fraternity, association, brotherhood, body,~~  
2 ~~union, league, or other combination of persons or civil group shall be enlisted in such forces as an~~  
3 ~~organization or unit~~

4 Nothing in this article may be construed as authorizing such forces of the State Guard, or  
5 any part thereof, to be called, ordered or in any manner drafted as such, into the military service of  
6 the United States, but no person may by reason of his enlistment or commission in any such forces  
7 be exempted from military service under any law of the United States.

**§15-4-9. Disqualifications** **Civil organizations, etc., not to be enlisted as unit.**

1 ~~No person shall be commissioned or enlisted in such forces who is not a citizen of the~~  
2 ~~United States or who has been expelled or dishonorably discharged from any military or naval~~  
3 ~~organization of this state, or of another state, or of the United States~~

4 No civil organization, society, club, post, order, fraternity, association, brotherhood, body,  
5 union, league, or other combination of persons or civil group may be enlisted in such forces as an  
6 organization or unit.

**§15-4-10. Oath of officers Disqualifications.**

1        ~~The oath to be taken by officers commissioned in such forces shall be substantially in the~~  
2        ~~form prescribed for officers of the National Guard, substituting the words "West Virginia state~~  
3        ~~guard" where necessary~~

4        No person may be commissioned or enlisted in such forces who is not a citizen of the  
5        United States, or who has been expelled or dishonorably discharged from any military or naval  
6        organization of this state, or of another state, or of the United States; is a convicted felon; has a  
7        misdemeanor offense of domestic violence or violence against law enforcement; or has diagnosed  
8        mental health issues.

**§15-4-11. ~~Term of enlistment; oath of enlisted men~~ Oath of Officers.**

1        ~~No person shall be enlisted for more than one year but such enlistment may be renewed.~~  
2        ~~The oath to be taken upon enlistment in such forces shall be substantially in the form prescribed~~  
3        ~~for enlisted men of the National Guard, substituting the words "West Virginia state guard" where~~  
4        ~~necessary~~

5        Commissions in the State Guard shall be for two years and may be renewed. The oath to  
6        be taken by officers commissioned in such forces shall be as follows "I, [name], do solemnly swear  
7        (or affirm) that I will support and defend the Constitution of the United States and the Constitution  
8        of the State of West Virginia against all enemies, foreign and domestic; that I will bear true faith  
9        and allegiance to the same; that I will obey the lawful orders of the Governor of the State of West  
10       Virginia; that I take this obligation freely, without any mental reservation or purpose of evasion; and  
11       that I will well and faithfully discharge the duties of the Office of [grade] in the West Virginia State  
12       Guard on which I am about to enter, so help me God."

**§15-4-12. ~~Articles of war to apply as to court-martial, etc.; freedom from arrest; jury duty~~****Terms of enlistment; oath of enlisted members.**

1        ~~(a) Whenever such forces or any part thereof shall be ordered out for active service the~~  
2        ~~articles of war of the United States applicable to members of the National Guard of this state in~~

relation to courts-martial, their jurisdiction and the limits of punishment and the rules and regulations prescribed thereunder shall be in full force and effect with respect to the West Virginia state guard.

(b) No officer or enlisted man of such forces shall be arrested on any warrant, except for treason or felony, while going to, remaining at, or returning from a place where he or she is ordered to attend for military duty. Every officer and enlisted man of such forces shall, during his or her service therein, be exempt from service upon any posse comitatus and from jury duty

Enlistments in the State Guard shall be for two years and may be renewed. The oath to be taken upon enlistment in such forces shall be as follows: "I do hereby acknowledge to have voluntarily enlisted this \_\_\_ day of \_\_\_, \_\_\_, in the West Virginia State Guard for a period of \_\_\_ year(s) under the conditions prescribed by law, unless sooner discharged by proper authority. I, \_\_\_\_\_, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and of the State of West Virginia against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the Governor of the State of West Virginia and the orders of the officers or officials appointed over me, according to law and \_\_\_\_\_ regulations. So \_\_\_\_\_ help \_\_\_\_\_ me \_\_\_\_\_ God."

**§15-4-13. Citation of article Articles of war to apply as to court-martial, etc.; freedom from arrest; jury duty.**

This article may be cited as the "West Virginia State Guard Act

(a) Whenever forces of the State Guard, or any part thereof, are ordered out for active service the articles of war of the United States applicable to members of the National Guard of this state in relation to courts-martial, their jurisdiction and the limits of punishment and the rules and regulations prescribed thereunder shall be in full force and effect with respect to the West Virginia State Guard.

(b) No officer or enlisted members of these forces may be arrested on any warrant, except for treason or felony, while going to, remaining at, or returning from a place where he or she is

ordered to attend for military duty. Every officer and enlisted person of these forces shall, during service therein, be exempt from service upon any posse comitatus and from jury duty.

**§15-4-14. Citation of article.**

This article may be cited as the "West Virginia State Guard Act."

**§15-4-15. Recruitment West Virginia State Guard; incentives; keeping of arms; personnel issues; etc.**

(a) Recruitment for the State Guard shall be accomplished by the Adjutant General and shall occur at West Virginia National Guard armories and county sheriffs' offices.

(b) Military veterans and law enforcement officers shall be requested, but may not be required, to assume officer and enlisted leadership positions in the State Guard commensurate with their former ranks and experience throughout the force structure.

(c) State Guard members qualify for similar state veterans' benefits as other U.S. military veterans after at least two years consisting of at least 300 hours of honorable service (those with 20 years' service, shall continue benefits after separation).

(1) State Guard members shall receive the same protections, including protection against employment discrimination, afforded to West Virginia National Guard members.

(2) State Guard members qualify for WV educational benefits after six years of honorable service.

(3) State Guard members shall receive an annual \$2,000 state income tax deduction or \$100 property tax reduction while serving in the State Guard after at least two years consisting of 350 hours of honorable service; this income tax deduction or property tax reduction shall increase by 50 per cent every two years of honorable service (with at least 350 hours of service); after six years of honorable service members may take both state income tax credits and property tax reductions; those with 20 years honorable service, shall continue to receive these benefits after separation.

(4) The State Treasurer shall develop a death benefits program commensurate with the

National Guard for deaths of State Guard members while on duty.

(5) The West Virginia Insurance Commissioner shall develop a worker's compensation program commensurate with any West Virginia government employee for injuries to State Guard members sustained while on duty.

(6) After two years honorable service, State Guard members shall enjoy the same veteran employment preferences for West Virginia government positions as members of the U.S. military and West Virginia National Guard.

(7) The West Virginia Department of Natural Resources shall develop a program to provide State Guard members, with two years honorable service, with free annual hunting and fishing licenses.

(8) State Guard members may retain any firearm, without interference by any governmental entity. All such firearms are sanctioned by the State of West Virginia. Any weapon and ammunition used by members of the State Guard, and the locations that those weapons are stored, are considered part of the State Armory of West Virginia, and shall be afforded legal protection by the State of West Virginia. Any weapons and ammunition kept by State Guard members discharged after six years under honorable conditions, members of U.S. military discharged under honorable conditions, current and former law enforcement officers and firefighters are also considered part of the State Armory of West Virginia, and shall be afforded legal protection by the State of West Virginia.

(9) Volunteers must be able to complete a physical fitness test, and mental aptitude and psychological exam; and must be successfully interviewed by State Guard battalion officers and recommended for a position and initial rank in the State Guard.

(10) Volunteers may administratively separate before six years with no benefits.

(d) Individuals, including those not physically capable, may volunteer as auxiliaries to provide support at the regimental level. Volunteer auxiliaries shall provide medical, nursing, administrative staff and recruitment support, security, maintenance, and other service support.

Volunteer auxiliaries are also assured of their ability to retain any firearm, but are not otherwise eligible for veterans' benefits, unless having already fulfilled the criteria for a veteran.

(e) The state of West Virginia may impose a military service obligation of up to six years in the State Guard on all men residing in West Virginia. Individuals who have already served honorably in the U.S. military; or as a law enforcement officer, firefighter, or in the State Guard for over six years; or are over 65 years or unfit for service are exempt.

**§15-4-16.                   Activation                   of                   the                   State                   Guard.**

(a) The Governor may call up elements of the State Guard to active duty for up to one month to respond to emergencies.

(b) When activated, the Adjutant General of the State of West Virginia shall have authorities over the State Guard.

(c) County commissions may call up companies or battalions to active duty in their county for up to two weeks to respond to emergencies either in their or adjacent counties. A majority of county commissions in a region may coordinate to call up the regimental headquarters in their region for up to one month to coordinate major responses to multi-county emergencies.

(d) County sheriffs may conduct an emergency call up to active duty of companies in their county for 48 hours to respond to emergencies either in their or adjacent counties. Periods beyond 48 hours must be approved by the county commission. County sheriffs shall exercise principal authority over State Guard elements in their county when these are activated. County sheriffs may deputize State Guard units or members to provide assistance to law enforcement, facilitate security and traffic control, protect facilities, and screen travelers near designated areas.

(e) Periods beyond one month of active duty for state guard units must be approved by the state legislature.

NOTE: The purpose of this bill is to revise and update the provisions of state code relating to all aspects of the West Virginia State Guard.

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