

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 609

INTERIM
BILL

BY SENATORS SWOPE AND CLINE

[Introduced January 24, 2020; referred
to the Committee on Government Organization]

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

Be it enacted by the Legislature of West Virginia:

ARTICLE 1L. WEST VIRGINIA CIVIL AUTHORITY ACT.

§15-1L-1. Short title

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

§15-1L-2. Legislative findings.

1 The Legislature finds that the West Virginia Division of Homeland Security and Emergency
 2 Management (WVDHSEM) is a unique entity that has a specific mission for security and
 3 protection of West Virginia and the United States. In this capacity, the West Virginia Division of
 4 Homeland Security and Emergency Management receives funds to administer programs,
 5 including the hiring of employees, that the federal government, including the Department of
 6 Homeland Security, provides to West Virginia Division of Homeland Security and Emergency

7 Management in support of specific activities for various federal agencies for national security and
8 homeland security purposes. These programs fulfill specific agency purposes and necessarily
9 require continued funding by the federal government.

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

§15-1L-3. Definitions.

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

2 “Authority” means the West Virginia Civil Authority.

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

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

7 “PEIA” means Public Employees Insurance Act.

8 “PERS” means Public Employees Retirement System.

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

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

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

4 (b) The authority will be administered by the Executive Director and the West Virginia

5 Division of Homeland Security and Emergency Management.

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

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

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

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

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

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

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

29 (6) Contract on behalf of the WVDHSEM with the federal government, its instrumentalities
30 and agencies, any state, territory or the District of Columbia and its agencies and

31 instrumentalities, municipalities, foreign governments, public bodies, private corporations,
 32 partnerships, associations and individuals for specialized technical services at a rate
 33 commensurate with industry standards as determined by the executive director to support specific
 34 activities related to state security, national security, homeland security and other non-military-
 35 related programs:

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

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

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

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

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

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

§15-1L-5. Employees.

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

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

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

7 (3) Each employee hired shall be deemed an at-will employee who may be discharged or

8 released from his or her respective position without cause or reason.

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

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

ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT

§15-5-1. Policy and purpose.

1 In view of the existing and increasing possibility of the occurrence of disasters of
2 unprecedented size and destructiveness and large-scale threats, resulting from terrorism, enemy
3 attack, sabotage or other hostile action, or from fire, flood, earthquakes or other natural or man-
4 made causes and in order to insure that preparations of this state will be adequate to deal with
5 the disasters and large-scale threats, and generally to provide for the common defense and to
6 protect the public peace, health and safety and to preserve the lives and property of the people
7 of the state, it is found and declared to be necessary: (1) To create the Division of Homeland
8 Security and Emergency Management and to authorize the creation of local and regional
9 organizations for emergency services in the political subdivisions of the state; (2) to confer upon
10 the Governor and upon the executive heads of governing bodies of the political subdivisions of
11 the state the emergency powers provided herein; (3) to provide for the rendering of mutual aid
12 among the political subdivisions of the state and with other states and to cooperate with the federal
13 government with respect to the carrying out of emergency services and homeland security
14 functions; and (4) to establish and implement comprehensive homeland security and emergency
15 management plans to deal with such disasters and large-scale threats. It is further declared to be
16 the purpose of this article and the policy of the state that all homeland security and emergency
17 management funds and functions of this state be coordinated to the maximum extent with the
18 Secretary of the Department of Military Affairs and Public Safety office of the Governor and with

19 the comparable functions of the federal government including its various departments and
20 agencies, of other states and localities and of private agencies of every type, so that the most
21 effective preparation and use may be made of the nation's and this state's manpower, resources,
22 and facilities for dealing with any disaster or large-scale threat that may occur.

§15-5-2. Definitions.

1 As used in this article:

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

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

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

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

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

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

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

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

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

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

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

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

46 ~~(m)~~ “Residential housing” means a specific work or improvement within this state
47 undertaken primarily to provide dwelling accommodations, including the acquisition, construction

48 or rehabilitation of land, buildings and improvements thereto, for residential housing, including,
49 but not limited to, facilities for temporary housing and emergency housing, and such other
50 nonhousing facilities as may be incidental or appurtenant thereto; and

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

56 ~~(e) "Secretary" means the Secretary of the West Virginia Department of Military Affairs~~
57 ~~and Public Safety~~

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

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

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

15 a security clearance investigation for the purpose of obtaining, at a minimum, a federally issued
16 secret level security clearance.

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

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

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

40 by §15-5-1 *et seq.* of this code as may be prescribed by the Governor. ~~or the Secretary of the~~
41 ~~Department of Military Affairs and Public Safety~~

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

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

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

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

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

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

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

61 (6) Contracts may be entered into pursuant to this subsection with the federal government,
62 its instrumentalities and agencies, any state, territory or the District of Columbia and its agencies
63 and instrumentalities, municipalities, foreign governments, public bodies, private corporations,
64 partnerships, associations and individuals for specialized technical services at a rate

- 65 commensurate with industry standards as determined by the director to support specific activities
66 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.

This bill is recommended by the Joint Committee on Flooding for introduction and passage during the 2020 Regular Session.

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