

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 389

BY SENATOR SWOPE

[Passed April 5, 2021; in effect 90 days from passage (July 4, 2021)]

1 AN ACT to amend and reenact §29-31-2 of the Code of West Virginia, 1931, as amended, relating
2 to clarifying that State Resiliency Office is responsible to plan for emergency and disaster
3 response, recovery, and resiliency; clarifying that the State Resiliency Officer is a member
4 of the State Resiliency Office Board; placing Secretary of the Department of Health and
5 Human Resources on board; requiring that the President of the Senate appoint two
6 nonvoting members, one from each party, to the board; requiring the Speaker of the House
7 of Delegates appoint two nonvoting members, one from each party, to the board; requiring
8 that State Resiliency Officer vote only in the event of a tie vote of board; requiring that
9 board elect a vice chair from its membership; establishing duties and responsibilities of
10 the vice chair; and eliminating notice requirement for board meetings.

Be it enacted by the Legislature of West Virginia:

ARTICLE 31. STATE RESILIENCY AND FLOOD PROTECTION PLAN ACT.

§29-31-2. State Resiliency Office.

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

12 (b)(1) The State Resiliency Office Board is also established and shall consist of the
13 following members: The State Resiliency Officer; the Secretary of the Department of Commerce

14 or his or her designee; the Director of the Division of Natural Resources or his or her designee;
15 the Secretary of the Department of Environmental Protection or his or her designee; the Executive
16 Director of the State Conservation Agency or his or her designee; the President of the West
17 Virginia Emergency Management Council or his or her designee; the Secretary of the Department
18 of Health and Human Resources or his or her designee; the Secretary of the Department of
19 Homeland Security or his or her designee; the Secretary of Transportation or his or her designee;
20 the Adjutant General of the West Virginia National Guard or his or her designee; the Director of
21 the Division of Emergency Management within the Department of Homeland Security or his or
22 her designee; two nonvoting members of the West Virginia Senate, one from each party, to be
23 appointed by the President of the Senate; and two nonvoting members of the West Virginia House
24 of Delegates, one from each party, to be appointed by the Speaker of the House of Delegates.

25 (2) A member of the board holds office so long as he or she retains the office or position
26 by virtue of which he or she is serving on the board. A majority of the board is a quorum and the
27 concurrence of a board in any matter within their duties is required for its determination. The
28 members of the board may not receive compensation for their services on the committee, but are
29 entitled to reimbursement of expenses, including traveling expenses necessarily incurred in the
30 discharge of their duties on the board.

31 (3) The board shall:

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

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

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

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

38 (c)(1) The State Resiliency Officer shall be the chair of the State Resiliency Office Board
39 and shall be appointed by the Governor with the advice and consent of the Senate. The State

40 Resiliency Officer may cast a vote only in the event of a tie vote. The board shall elect from its
41 voting membership a vice chair. The vice chair shall preside over the meetings of the board in the
42 absence of the chair. In the absence of both the chair and the vice chair any member designated
43 by the members present may act as chair.

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

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

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

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

53 (C) Be thoroughly knowledgeable in matters relating to flood control and hazard mitigation,
54 or alternatively, in matters relating to disaster recovery, emergency management, and emergency
55 response.

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

62 (A) Have at least three years' managerial or strategic planning experience in matters
63 relating to flood control and hazard mitigation or, alternatively, in disaster recovery, emergency
64 management, or emergency response;

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

68 (C) Be thoroughly knowledgeable in matters relating to flood control and hazard mitigation,
69 or alternatively, in matters relating to disaster recovery, emergency management, and emergency
70 response; and

71 (D) If the State Resiliency Officer has his or her primary experience in flood control and
72 hazard mitigation then his or her deputy must have experience in disaster recovery, emergency
73 management, or emergency response; alternatively, if the State Resiliency Officer has his or her
74 primary experience in disaster recovery, emergency management, or emergency response then
75 his or her deputy must have experience in flood control and hazard mitigation.

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

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

85 (1) Establish mechanisms to coordinate resiliency-related programs and activities among
86 state agencies and to encourage intergovernmental as well as cross-sector coordination and
87 collaboration;

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

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

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

95 (5) Make recommendations regarding practical steps that can be taken to improve
96 efficiencies, and to pool and leverage resources to improve resiliency;

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

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

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

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

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

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

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

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

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

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

134 (2) The following are exempt from public disclosure under the provisions of chapter 29B
135 of this code:

136 (A) All deliberations of the board;

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

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2021.

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Governor