

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **House Bill 2009**

By Delegates McGeehan, C. Pritt, Crouse, Phillips,  
Ridenour, Shamblin, Kimble, Ross, Coop-Gonzalez,  
Horst, and Lucas

[Introduced January 16, 2023; Referred to the  
Committee on Government Organization]

1 A BILL to amend and reenact §15-5-2 and §15-5-6 of the Code of West Virginia, 1931, as  
 2 amended, all relating to the authority and obligations of the Governor and Legislature when  
 3 in declared states of preparedness and emergency; clarifying the authority and obligations  
 4 of the Governor during periods of preparedness and emergency; providing requirements  
 5 for any proclamation or resolution issued relating to a state of preparedness or emergency;  
 6 defining terms; specifying new criteria for the duration and termination of states of  
 7 preparedness and emergency; providing for the extension of states of emergency and  
 8 preparedness by concurrent resolution of the Legislature and specifying the duration of  
 9 such extensions; providing directives for lawsuits filed challenging actions taken pursuant  
 10 to the authority granted herein; and updating references to a state agency.

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

**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 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 "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, including  
14 weapons of mass destruction, fire, flood, earthquake, wind, snow, storm, chemical or oil spill or  
15 other water or soil contamination, epidemic, air contamination, blight, drought, infestation or other  
16 public calamity requiring emergency action;

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

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

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

38 preparedness, and for recovery from a disaster;

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

41 "House of worship" means a church, temple, synagogue, mosque, or other building or  
42 space set apart primarily for the purpose of worship, devotion, veneration or religious study;

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

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

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

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

53 "Recovery fund" means the West Virginia Disaster Recovery Trust Fund created by this  
54 article;

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

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

62 "State of emergency" means the duly proclaimed existence of, or the imminent existence  
63 of, conditions of disaster, or, of a serious threat to the safety of persons and property within West

64 Virginia, such as an attack upon the state or the United States, a natural or man-made disaster of  
65 major proportions, or a large-scale threat beyond the capacity of local control.

66 "State of preparedness" means those specialized planning and preparation activities  
67 intended to minimize any anticipated impact of a pending emergency initiated for the purpose of  
68 preserving and securing people or property from harm by utilization of any available governmental  
69 resources: *Provided*, That a state of preparedness may not be used to suspend or limit any  
70 government function or service to the public, including, but not limited to, closing public schools or  
71 governmental offices, nor to regulate or restrict any private state citizen's conduct, such as  
72 requiring evacuation of areas of the state or other like action, unless otherwise authorized by law;  
73 and

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

#### **§15-5-6. Emergency powers of Governor.**

1 (a) The provisions of this section, and of any executive order issued pursuant to the  
2 provisions of this section, are operative only during the existence of a state of emergency or state  
3 of preparedness. Nothing in this section may be construed to suspend or supersede any provision  
4 of the Constitution.

5 (1) The existence of a state of emergency or state of preparedness may be proclaimed by  
6 the Governor or by concurrent resolution of the Legislature if the Governor in the proclamation, or  
7 the Legislature in the resolution, finds that an attack upon the state or the United States has  
8 occurred or is ~~anticipated in the immediate future~~ imminent, or that a natural or man-made disaster  
9 of major proportions has actually occurred or is imminent within the state, or that an emergency

10 exists or may be imminent due to a large-scale threat beyond local control, and that the safety and  
11 welfare of the inhabitants of this state require an invocation of the provisions of this section.

12 (2) The existence of a state of preparedness may be proclaimed by the Governor or by  
13 concurrent resolution of the Legislature, if the Governor in the proclamation, or the Legislature in  
14 the resolution, finds that an attack upon the state or the United States is anticipated in the  
15 immediate future, or that a natural or man-made disaster of major proportions is likely within the  
16 state or some portion thereof, or that an emergency may be likely due to a large-scale threat  
17 beyond local control, or that a major event necessitating cooperation between state and local  
18 authorities, or the federal government, is imminent, and that the safety and welfare of the  
19 inhabitants of this state require an invocation of the provisions of this section.

20 (b) (1) Any state of emergency ~~or state of preparedness~~, whether proclaimed by the  
21 Governor or by the Legislature, terminates upon the proclamation of the termination by the  
22 Governor, or the passage by the Legislature of a concurrent resolution terminating the state of  
23 emergency: ~~or state of preparedness~~ *Provided*, That in no case shall a state of ~~preparedness~~  
24 emergency last longer than ~~thirty~~ 60 days, unless the Legislature, by passage of a concurrent  
25 resolution, shall extend the time period of the state of emergency: *Provided, however*, That such  
26 extension may be renewed, if necessary, by passage of a subsequent concurrent resolution of the  
27 Legislature. The Legislature may also condition, limit, terminate, or expand any action or directive  
28 made either by the proclamation of the Governor relating to the state of emergency or any  
29 executive order issued as a result of such proclamation. Upon proclamation by the Governor of a  
30 state of emergency, the Governor may call the Legislature into special session.

31 (2) Any state of preparedness, whether proclaimed by the Governor or by the Legislature,  
32 terminates upon the proclamation of the termination by the Governor, or the passage by the  
33 Legislature of a concurrent resolution terminating the state of preparedness: *Provided*, That in no  
34 case shall a state of preparedness last longer than 30 days, unless the Legislature by passage of a  
35 concurrent resolution, shall extend the time period of the state of preparedness: *Provided*

36 however, That such extension may be renewed, if necessary, by passage of a subsequent  
37 concurrent resolution of the Legislature. The Legislature may also condition, limit, terminate, or  
38 expand any action or directive made either by the proclamation of the Governor relating to the  
39 state of preparedness or any executive order issued as a result of such proclamation. Upon  
40 proclamation by the Governor of a state of preparedness, the Governor may call the Legislature  
41 into special session.

42 (c) For the purposes of calculation of the length of time of the existence of a state of  
43 preparedness or state of emergency commenced according to the provisions of this section, when  
44 the Governor issues a proclamation declaring a state of preparedness or emergency, any  
45 subsequent proclamation that substantially relates to the same circumstances that caused the  
46 issuance of the initial proclamation shall be treated as a continuation of the initial proclamation for  
47 that purpose, even if the prior proclamation, has, by its own terms, expired: *Provided*, That when a  
48 state of emergency follows a state of preparedness, and they are substantially relating to the same  
49 circumstances, the total time allotted for the duration of the two states combined shall be no more  
50 than 60 days, unless the Governor follows the requirements for extending the state of emergency  
51 under subsection (b)(1) of this section.

52 (d) The Governor shall have the following delineated powers so long as a state of  
53 preparedness exists and which are intended to be strictly construed to authorize only those  
54 actions that are consistent with constitutional or statutory law, or with final orders of those courts of  
55 competent jurisdiction to which the Governor is subject: ~~So long as a state of emergency or state~~  
56 ~~of preparedness exists, the Governor has and may exercise the following additional emergency~~  
57 ~~powers:~~

58 (1) To enforce all laws and rules relating to the provision of emergency services and to  
59 assume direct operational control of any or all emergency service forces and helpers in the state:

60 (2) To sell, lend, lease, give, or transfer state property, make purchases, or deliver  
61 materials or perform functions relating to emergency services on terms and conditions he or she

62 prescribes and without regard to the limitations of any existing law and to account to the State  
63 Treasurer for any funds received for the property;

64 ~~(3) To procure materials and facilities for emergency services by purchase, condemnation~~  
65 ~~under the provisions of chapter fifty-four of this code or seizure pending institution of~~  
66 ~~condemnation proceedings within thirty days from the seizing thereof and to construct, lease,~~  
67 ~~transport, store, maintain, renovate or distribute the materials and facilities. Compensation for~~  
68 ~~property so procured shall be made in the manner provided in chapter fifty-four of this code~~

69 ~~(4)~~ (3) To obtain the services of necessary personnel, required during the emergency, and  
70 to compensate them for their services from his or her contingent funds or other funds available to  
71 him or her;

72 ~~(5) To provide and compel the evacuation of all or part of the population from any stricken~~  
73 ~~or threatened area within the state and to take steps that are necessary for the receipt and care of~~  
74 ~~the evacuees~~

75 ~~(6) To control ingress and egress to and from a disaster area or an area where large-scale~~  
76 ~~threat exists, the movement of persons within the area and the occupancy of premises therein~~

77 ~~(7)~~ (4) To suspend the provisions of any regulatory statute prescribing the procedures for  
78 conduct of state business or the orders, rules of any state agency, if strict compliance therewith  
79 would in any way prevent, hinder or delay necessary action in coping with the emergency;

80 ~~(8)~~ (5) To use available resources of the state and of its political subdivisions that are  
81 reasonably necessary to cope with the emergency;

82 ~~(9)~~ (6) To suspend or limit the sale, dispensing or transportation of alcoholic beverages,  
83 explosives and combustibles;

84 ~~(10)~~ (7) To make provision for the availability and use of temporary emergency housing;  
85 and

86 ~~(14)~~ (8) To perform and exercise other functions, powers and duties that are necessary to  
87 promote and secure the safety and protection of the civilian population.



88 (e) In the event of the declaration of a state of emergency, the Governor shall have and  
89 may exercise all the preceding powers delineated in this section for use in a state of preparedness,  
90 as well as the following additional emergency powers which are intended to be strictly construed to  
91 authorize only those actions that are consistent with constitutional or statutory law, or with final  
92 orders of those courts of competent jurisdiction to which the Governor is subject:

93 (1) To procure facilities for emergency services by purchase, by condemnation under the  
94 provisions of Chapter 54 of this code, or by seizure pending institution of condemnation  
95 proceedings within 30 days from the seizing thereof, and to construct, lease, transport, store,  
96 maintain, renovate or distribute the materials and facilities. Compensation for property so  
97 procured shall be made in the manner provided in Chapter 54 of this code;

98 (2) To provide and compel the evacuation of all or part of the population from any stricken  
99 or threatened area within the state and to take steps that are necessary for the receipt and care of  
100 the evacuees; and

101 (3) To control ingress and egress to and from a disaster area or an area where large-scale  
102 threat exists, the movement of persons within the area, and the occupancy of premises therein.

103 ~~(d)~~ (f) The declaration of a state of preparedness has the same effect as a declaration of a  
104 state of emergency for the purposes of the Emergency Management Assistance Compact  
105 established in §15-5-22 of this code and the Statewide Mutual Aid Systems set forth in §15-5-28 of  
106 this code.

107 (g) Any proclamation or resolution issued under this section must include, in general terms:

108 (1) A description of the nature of the disaster;

109 (2) A designation of the geographic area threatened; and

110 (3) A description of the conditions that have either:

111 (A) Caused the state of emergency or preparedness; or

112 (B) Made possible the termination of the state of emergency or preparedness.

113 Any such proclamation or resolution shall be disseminated as expeditiously as possible by  
114 means which are calculated to bring its contents to the attention of the general public and the Joint  
115 Committee on Government and Finance of the Legislature and, unless the circumstances  
116 attendant to the state of emergency or preparedness shall prevent or impede such filing, shall be  
117 promptly filed with the Secretary of State.

118 ~~(e)~~ (h) The powers granted under this section do not authorize any action that would violate  
119 the prohibitions of §15-5-19a of this code.

120 (i) Any suit filed challenging an executive order issued relating to a state of preparedness  
121 or emergency pursuant to the authority granted in this section shall be limited to a petition for  
122 prohibition or mandamus pursuant to Rule 16 of the Rules of Appellate Procedure of the West  
123 Virginia Supreme Court of Appeals. The provisions of §55-17-3 of this code are not applicable to  
124 any suit filed challenging an executive order issued pursuant to this section.

125 (j) Nothing in this section may be construed as to authorize the Governor to close or dictate  
126 religious practices in a house of worship during a state of preparedness or state of emergency.

NOTE: The purpose of this bill is to clarify the authority and obligations of the Governor and Legislature relating to declared states of preparedness and emergencies; clarifying the authority of the Governor; providing requirements for any proclamation or resolution so issued; and providing directives for lawsuits filed challenging actions taken pursuant to the authority granted herein.

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