

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**Introduced**

## **Senate Bill 128**

By Senators Smith, Tarr, Azinger, Roberts, Deeds,

Boley, Rucker, Taylor, Karnes, and Woodrum

[Introduced January 11, 2023]

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 states of emergency and preparedness; defining terms; clarifying  
3 the authority of the Governor and the Legislature to proclaim or declare states of  
4 emergency and preparedness; creating two classes of states of preparedness and  
5 establishing the criteria therefor; establishing the initial duration of gubernatorially  
6 proclaimed states of emergency and preparedness and the requirements for extending  
7 same; expanding and clarifying the powers of the Governor as to what he or she may order  
8 under proclamations of states of emergency and preparedness; expressly limiting the  
9 Governor's authority to order certain actions in an executive order issued pursuant to a  
10 proclamation or declaration of a state of emergency or preparedness; clarifying that the  
11 declaration of a state of preparedness has the same effect as a declaration of a state of  
12 emergency for the purposes of the Emergency Management Assistance Compact and the  
13 Statewide Mutual Aid System; and stating that the powers granted as to orders issued  
14 under states of emergency do not include the authority to limit the lawful possession and  
15 use of firearms and ammunitions.

*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 (1) "Board" means the West Virginia Disaster Recovery Board created by this article;

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

4 (3) "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 (4) “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 (5) “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 (6) “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 (7) “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 (8) “Essential business activities” means a specific work or improvement within this state or  
35 a 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 (9) “Local organization for emergency services” means an organization created in  
42 accordance with the provisions of this article by state or local authority to perform local emergency  
43 services ~~function~~functions;

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

47 (11) “Person” means any individual, corporation, voluntary organization or entity,  
48 partnership, firm, or other association, organization, or entity organized or existing under the laws  
49 of this or any other state or country;

50 (12) “Political subdivision” means any county or municipal corporation in this state;

51 (13) “Recovery fund” means the West Virginia Disaster Recovery Trust Fund created by  
52 this article;

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

58 (15) “Secretary” means the Secretary of the West Virginia Department of Military Affairs

59 and ~~Public Safety~~ Homeland Security; and

60 (16) "State of emergency" means the duly proclaimed existence of conditions of disaster or  
61 other serious threat to the health or safety of persons and property within West Virginia, or a  
62 specific geographic area thereof, including but not limited to an attack upon the state or the United  
63 States, a natural or man-made disaster of major proportions, a pandemic, or other large-scale  
64 threat beyond the capacity of local control;

65 (17) "State of preparedness" means the duly proclaimed authorization for:

66 (A) Specialized planning and preparation activities intended to minimize the anticipated  
67 effect of conditions constituting a state of emergency, as defined in this section, which, in the  
68 judgment of the Governor, are expected to commence within the next 30 days, or within a period of  
69 longer than 30 days if necessary to obtain funding or maintain compliance with federal or  
70 interjurisdictional requirements: *Provided*, That a state of preparedness which is duly proclaimed  
71 under such circumstances shall be referred to as a "Class I state of preparedness"; or

72 (B) Specialized planning and preparation activities intended to minimize, by use of any  
73 available and appropriate federal or state governmental resources, the anticipated impact of or  
74 anticipated threats caused by a planned or anticipated event of such large size or scope that it is  
75 beyond the capacity of local control, and which is scheduled to commence within the next 30 days,  
76 or within a period of time longer than 30 days, if necessary to obtain funding or maintain  
77 compliance with federal or interjurisdictional requirements: *Provided*, That a state of preparedness  
78 which is duly proclaimed under such circumstances shall be referred to as a "Class II state of  
79 preparedness"; and

80 (18) "Temporary housing" means a specific work or improvement within this state  
81 undertaken primarily to provide dwelling accommodations, including the acquisition, construction  
82 or rehabilitation of land, buildings and improvements thereto, for temporary residential shelters or  
83 housing for victims of a disaster and such other nonhousing facilities that are incidental or  
84 appurtenant thereto.

**§15-5-6. Emergency powers of Governor Proclamation of a state of emergency or state of preparedness by the Governor or the Legislature; additional powers of the Governor during a state of emergency or state of preparedness.**

1           (a) ~~The provisions of this section are operative only during the existence of a state of~~  
2 ~~emergency or state of preparedness. The existence of a state of emergency or state of~~  
3 ~~preparedness may be proclaimed by the Governor or by concurrent resolution of the Legislature if~~  
4 ~~the Governor in the proclamation, or the Legislature in the resolution, finds that an attack upon the~~  
5 ~~United States has occurred or is anticipated in the immediate future, or that a natural or man-made~~  
6 ~~disaster of major proportions has actually occurred or is imminent within the state, or that an~~  
7 ~~emergency exists or may be imminent due to a large-scale threat beyond local control, and that~~  
8 ~~the safety and welfare of the inhabitants of this state require an invocation of the provisions of this~~  
9 ~~section.~~

10           (b) ~~Any state of emergency or state of preparedness, whether proclaimed by the Governor~~  
11 ~~or by the Legislature, terminates upon the proclamation of the termination by the Governor, or the~~  
12 ~~passage by the Legislature of a concurrent resolution terminating the state of emergency or state~~  
13 ~~of preparedness: *Provided*, That in no case shall a state of preparedness last longer than thirty~~  
14 ~~days.~~

15           (c) ~~So long as a state of emergency or state of preparedness exists, the Governor has and~~  
16 ~~may exercise the following additional emergency powers:~~

17           (1) ~~To enforce all laws and rules relating to the provision of emergency services and to~~  
18 ~~assume direct operational control of any or all emergency service forces and helpers in the state.~~

19           (2) ~~To sell, lend, lease, give, transfer, or deliver materials or perform functions relating to~~  
20 ~~emergency services on terms and conditions he or she prescribes and without regard to the~~  
21 ~~limitations of any existing law and to account to the State Treasurer for any funds received for the~~  
22 ~~property.~~

23           (3) ~~To procure materials and facilities for emergency services by purchase, condemnation~~

24 ~~under the provisions of chapter fifty-four of this code or seizure pending institution of~~  
25 ~~condemnation proceedings within thirty days from the seizing thereof and to construct, lease,~~  
26 ~~transport, store, maintain, renovate, or distribute the materials and facilities. Compensation for~~  
27 ~~property so procured shall be made in the manner provided in chapter fifty-four of this code.~~

28 ~~(4) To obtain the services of necessary personnel, required during the emergency, and to~~  
29 ~~compensate them for their services from his or her contingent funds or other funds available to him~~  
30 ~~or her.~~

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

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

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

39 ~~(8) To use available resources of the state and of its political subdivisions that are~~  
40 ~~reasonably necessary to cope with the emergency.~~

41 ~~(9) To suspend or limit the sale, dispensing or transportation of alcoholic beverages,~~  
42 ~~explosives, and combustibles; (10) To make provision for the availability and use of temporary~~  
43 ~~emergency housing; and~~

44 ~~(11) To perform and exercise other functions, powers and duties that are necessary to~~  
45 ~~promote and secure the safety and protection of the civilian population.~~

46 ~~(d) The declaration of a state of preparedness has the same effect as a declaration of a~~  
47 ~~state of emergency for the purposes of the Emergency Management Assistance Compact~~  
48 ~~established in section twenty-two of this article and the Statewide Mutual Aid Systems set forth in~~  
49 ~~section twenty-eight of this article.~~

50 ~~(e) The powers granted under this section do not authorize any action that would violate~~  
51 ~~the prohibitions of section nineteen-a of this article~~

52 (a) The provisions of this section, and any executive order issued pursuant to the  
53 provisions of this section, are operative only during the existence of a state of emergency or state  
54 of preparedness: *Provided*, That nothing in this section may be construed to suspend or  
55 supersede any provision of the United States Constitution or West Virginia Constitution.

56 (b) The existence of a state of emergency may be proclaimed by the Governor by  
57 executive order or by concurrent resolution of the Legislature if the Governor in the proclamation,  
58 or the Legislature in the concurrent resolution, finds that conditions warranting the proclamation of  
59 a state of emergency, as defined in this article, exist, and that the health, safety, and welfare of the  
60 inhabitants of this state require an invocation of the provisions of this section: *Provided*, That a  
61 gubernatorially proclaimed state of emergency expires 60 days after issuance of the executive  
62 order unless, prior to the 60th day, the Governor provides written notice to the President of the  
63 Senate, the Speaker of the House of Delegates and the Joint Committee on Government and  
64 Finance that in his or her opinion it is necessary to extend the state of emergency. If the Governor  
65 extends the state of emergency beyond 60 days, he or she shall thereafter, no less frequently than  
66 every 30 days, provide the President of the Senate, the Speaker of the House of Delegates and  
67 the Joint Committee on Government and Finance with a written statement of his or her reasons to  
68 believe that the conditions warrant any continuation of the state of emergency. The Governor shall  
69 provide a timely written response to any written inquiry from the President of the Senate, the  
70 Speaker of the House of Delegates or the Joint Committee on Government and Finance regarding  
71 the need for continuing the state of emergency and the facts supporting the continuation. A state of  
72 emergency, whether proclaimed by the Governor or by the Legislature, terminates upon the  
73 issuance of a proclamation of termination by the Governor, or the passage by the Legislature of a  
74 concurrent resolution terminating the state of emergency.

75 (c) The existence of a state of preparedness may be proclaimed by the Governor by

76 executive order or by concurrent resolution of the Legislature, if the Governor in the proclamation  
77 or the Legislature in the resolution, finds that conditions warranting the proclamation of a state of  
78 preparedness, as defined in this article, exist, and that the health, safety, and welfare of the  
79 inhabitants of this state require the invocation of the provisions of this section: *Provided*, That the  
80 Governor or the Legislature shall proclaim a state of preparedness as a "Class I state of  
81 preparedness" or a "Class II state of preparedness", as defined in this article, by law: *Provided*  
82 however, That a gubernatorially proclaimed state of preparedness expires 30 days after issuance  
83 of the executive order unless, prior to the 30th day, the Governor provides written notice to the  
84 President of the Senate, the Speaker of the House of Delegates and the Joint Committee on  
85 Government and Finance that, in his or her opinion, it is necessary to extend the state of  
86 preparedness. If the Governor extends the state of preparedness beyond 30 days he or she shall  
87 thereafter, no less frequently than every 30 days, provide the President of the Senate, the Speaker  
88 of the House of Delegates and the Joint Committee on Government and Finance with a written  
89 statement of his or her reasons for believing that the conditions warrant any continuation of the  
90 state of preparedness. The Governor shall provide a timely written response to any written inquiry  
91 from the President of the Senate, the Speaker of the House of Delegates or the Joint Committee  
92 on Government and Finance regarding the need for continuing the state of preparedness and the  
93 circumstances and facts supporting the continuation. A state of preparedness, whether  
94 proclaimed by the Governor or by the Legislature, terminates upon the issuance of a proclamation  
95 of termination by the Governor, or the passage by the Legislature of a concurrent resolution  
96 terminating the state of preparedness.

97 (d) When a state of emergency follows a state of preparedness involving the same or  
98 substantially similar circumstances, the total time allotted for the duration of the two combined  
99 shall be no more than 90 days, unless the Governor follows the requirements for extending the  
100 state of emergency under subsection (b) of this section.

101 (e) Any proclamation or concurrent resolution issued under this section shall include, in

102 general terms:

103 (1) A description of the facts and circumstances warranting the proclamation or concurrent  
104 resolution; and

105 (2) A designation of the geographic area threatened.

106 (f) Any proclamation or resolution shall be disseminated as soon as practicable to the news  
107 media and any other means which are calculated to bring its contents to the attention of the  
108 general public: *Provided*, That for a gubernatorial proclamation of a state of emergency or state of  
109 preparedness, the Governor shall provide a copy of the executive order to the President of the  
110 Senate, the Speaker of the House of Delegates, and the Joint Committee on Government and  
111 Finance.

112 (g) Under a duly proclaimed state of emergency or state of preparedness, the Governor  
113 has the following additional powers which are intended to be construed to authorize actions which  
114 are consistent with constitutional or statutory law, or with final orders of those courts of competent  
115 jurisdiction to which the Governor is subject:

116 (1) To enforce all laws and rules relating to the provision of emergency services and to  
117 assume direct operational control of any or all emergency service entities and personnel in the  
118 state;

119 (2) To sell, lend, lease, give, or transfer property, to make purchases, deliver materials or  
120 perform functions relating to emergency services on terms and conditions he or she prescribes  
121 without regard to the limitations of any existing law or being required to account to the State  
122 Treasurer for any funds received for the property;

123 (3) To procure materials and facilities for emergency services by purchase, condemnation  
124 under the provisions of §54-1-1 *et seq.* of this code, or seizure pending institution of condemnation  
125 proceedings within 30 days from the seizing thereof and to construct, lease, transport, store,  
126 maintain, renovate, or distribute the materials and facilities. Compensation for the procured  
127 property shall be made in the manner provided in §54-1-1 *et seq.* of this code;

128           (4) To obtain the services of necessary personnel required during the emergency or in  
129 preparation for the emergency, and to compensate such personnel for their services from the  
130 Governor's Contingent Fund or other funds available to him or her;

131           (5) To provide and compel the evacuation of all or part of the population from any stricken  
132 or threatened area within the state and to take steps that are necessary for the receipt and care of  
133 the evacuees;

134           (6) To control ingress and egress into or out of a disaster area or other area subject to a  
135 state of emergency or state of preparedness, as well as the movement of persons and occupancy  
136 of premises within the area;

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

140           (8) To use available resources of the state and of its political subdivisions that are  
141 reasonably necessary to cope with the emergency or to prepare for the emergency;

142           (9) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages,  
143 explosives, and combustibles: *Provided*, That explosives and combustibles do not include  
144 firearms, ammunition, components of ammunition, or ammunition-reloading equipment and  
145 supplies;

146           (10) To make provision for the availability and use of temporary emergency housing; and

147           (11) To perform and exercise other functions, powers and duties that are necessary to  
148 promote and secure the safety and protection of the civilian population.

149           (h) The declaration of a state of preparedness has the same effect as a declaration of a  
150 state of emergency for the purposes of the Emergency Management Assistance Compact  
151 established in §15-5-22 of this code, and the Statewide Mutual Aid System set forth in §15-5-28 of  
152 this code.

153           (i) The powers granted under this section do not authorize any action that would violate the

154 prohibitions of §15-5-19a of this code.

155 (j) During any state of preparedness or state of emergency proclaimed at any time, an  
156 executive order of the Governor may not:

157 (1) Close churches or other houses of worship or prevent their operation in any manner  
158 that is more restrictive than the least restrictive provisions in place for the operation of the most  
159 essential facilities of government or private enterprise.

160 (2) Suspend or limit the lawful sale, lawful transfer, or lawful transportation of firearms,  
161 ammunition, components of ammunition, or ammunition-reloading equipment and supplies; or

162 (3) Except as authorized by the provisions of this article, interfere with, or impair the  
163 operation of the news media.

164 (k) Unless expressly authorized by an executive order of the Governor, a municipal,  
165 county, or state health officer, under color of a duly proclaimed state of emergency or state of  
166 preparedness, shall not take any enforcement action which is not authorized by statute.

167 (l) Any suit filed challenging an executive order issued relating to a state of preparedness  
168 or emergency pursuant to the authority granted in this section shall be limited to a petition for a writ  
169 of prohibition or mandamus pursuant to Rule 16 of the Rules of the West Virginia Supreme Court  
170 of Appeals. The provisions of §55-17-3 of this code are not applicable to any suit filed challenging  
171 an executive order issued pursuant to this section.