

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1951

ENROLLED

HOUSE BILL No. 305

(By Mr. Speaker, Mr. Flannery)

PASSED March 9, 1951

In Effect 90 days from Passage



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House Bill No. 305

(By MR. SPEAKER, MR. FLANNERY)

[Passed March 9, 1951; in effect ninety days from passage.]

AN ACT to repeal chapter sixty-one, acts of the Legislature, regular session, one thousand nine hundred forty-one, as amended by chapter one hundred forty-eight, acts of the Legislature, regular session, one thousand nine hundred forty-five, and to amend chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, to be designated article five, relating to the establishment of a civil defense agency and other organizations for civil defense within this state and granting certain executive powers with respect thereto.

Be it enacted by the Legislature of West Virginia:

That chapter sixty-one, acts of the Legislature, regular session, one thousand nine hundred forty-one, as amended by chapter one hundred forty-eight, acts of the Legislature, regular session, one thousand nine hundred forty-five, be repealed,

and that chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended, by adding thereto a new article, to be designated article five, to read as follows:

Article 5. Civil Defense

Section 1. *Policy and Purpose.*—In view of the existing
2 and increasing possibility of the occurrence of disasters of
3 unprecedented size and destructiveness resulting from
4 enemy attack, sabotage or other hostile action, or from
5 fire, flood, earthquakes, or other natural causes, and in
6 order to insure that preparations of this state will be ade-
7 quate to deal with such disasters, and generally to pro-
8 vide for the common defense and to protect the public
9 peace, health, and safety, and to preserve the lives and
10 property of the people of the state, it is hereby found and
11 declared to be necessary: (1) to create a state civil de-
12 fense agency, and to authorize the creation of local or-
13 ganizations for civil defense in the political subdivisions
14 of the state; (2) to confer upon the governor and upon the
15 executive heads of governing bodies of the political sub-
16 divisions of the state the emergency powers provided here-

17 in; and (3) to provide for the rendering of mutual aid
18 among the political subdivisions of the state and with
19 other states with respect to the carrying out of civil de-
20 fense functions.

21 It is further declared to be the purpose of this act and
22 the policy of the state that all civil defense functions of
23 this state be coordinated to the maximum extent with the
24 comparable functions of the federal government including
25 its various departments and agencies, of other states and
26 localities, and of private agencies of every type, to the
27 end that the most effective preparation and use may be
28 made of the nation's manpower, resources, and facilities
29 for dealing with any disaster that may occur.

Sec. 2. *Definitions.*—As used in this act:

2 (a) "Civil defense" shall mean the preparation for and
3 the carrying out of all emergency functions, other than
4 functions for which military forces are primarily respon-
5 sible, to minimize and repair injury and damage result-
6 ing from disasters caused by enemy attack, sabotage or
7 other hostile action, or by fire, flood, earthquake, or other
8 natural causes. These functions include, without limita-

9 tion, fire fighting services, police services, medical and
10 health services, rescue, engineering, air raid warning serv-
11 ices, communications, radiological, chemical and other
12 special weapons defense, evacuation of persons from strick-
13 en areas, emergency welfare services, emergency trans-
14 portation, existing or property assigned functions of plant
15 protection, temporary restoration of public utility serv-
16 ices, and other functions related to civilian protection, to-
17 gether with all other activities necessary or incidental to
18 the preparation for and carrying out of the foregoing func-
19 tions.

20 (b) "Local organization for civil defense" shall mean
21 an organization created in accordance with the provisions
22 of this act by state or local authority to perform local
23 civil defense functions.

24 (c) "Mobile reserve battalion" shall mean an organiza-
25 tion for civil defense created in accordance with the pro-
26 visions of this act by state or local authority to be dis-
27 patched by the governor to supplement local organizations
28 for civil defense in a stricken area.

29 (d) "Political subdivision" shall mean any county or
30 municipal corporation.

Sec. 3. *State Civil Defense Agency*.—There is hereby
2 created within the executive branch of the state govern-
3 ment a department of civil defense, hereinafter called the
4 civil defense agency, and a director of civil defense, here-
5 inafter called the director, who shall be the head thereof.
6 The director shall be appointed by the governor, with the
7 advice and consent of the Senate, to serve during the
8 pleasure of the governor.

9 The director may employ such technical, clerical, steno-
10 graphic and other personnel and fix their compensation,
11 and may make such expenditures within the appropria-
12 tion therefor, or from other funds made available to him
13 for the purpose of civil defense, as may be necessary to
14 carry out the purposes of this act.

15 The director and other personnel of the civil defense
16 agency shall be provided with appropriate office space,
17 furniture, equipment, supplies, stationery and printing in
18 the same manner as provided for personnel of other state
19 agencies.

20 The director, subject to the direction and control of the
21 governor, shall be the executive head of the civil defense
22 agency and shall be responsible to the governor for car-
23 rying out the program for civil defense of this state. He
24 shall coordinate the activities of all organizations for civil
25 defense within the state, and shall maintain liaison with
26 and cooperate with civil defense agencies and organiza-
27 tions of other states and of the federal government, and
28 shall have such additional authority, duties, and respon-
29 sibilities authorized by this act as may be prescribed by
30 the governor.

Sec. 4. *Civil Defense Advisory Council.*—There is hereby
2 created a civil defense advisory council, hereinafter called
3 the council, which shall consist of seven members to be
4 appointed by the governor. The council shall advise the
5 governor and the director on all matters pertaining to
6 civil defense. The governor shall serve as chairman of
7 the council, and the members thereof shall serve without
8 compensation, but shall be reimbursed for the reasonable
9 and necessary expenses incurred in the performance of
10 their duties.

Sec. 5. *Civil Defense Powers of the Governor.*—The
2 governor shall have general direction and control of the
3 civil defense agency, and shall be responsible for the
4 carrying out of the provisions of this act, and in the event
5 of disaster beyond local control, may assume direct oper-
6 tional control over all or any part of the civil defense
7 functions within this state.

8 In performing his duties under this act, the governor
9 is authorized to cooperate with the federal government,
10 with other states, and with private agencies in all matters
11 pertaining to the civil defense of this state and of the
12 nation.

13 In performing his duties under this act, the governor
14 is further authorized and empowered:

15 (1) To make, amend, and rescind the necessary orders,
16 rules and regulations to carry out the provisions of this
17 act within the limits of the authority conferred upon him
18 herein, with due consideration of the plans of the federal
19 government.

20 (2) To prepare a comprehensive plan and program for
21 the civil defense of this state, such plan and program to

22 be integrated into and coordinated with the civil defense
23 plans of the federal government and of other states to
24 the fullest possible extent, and to coordinate the prepara-
25 tion of plans and programs for civil defense by the po-
26 litical subdivisions of this state, such plans to be in-
27 tegrated into and coordinated with the civil defense plan
28 and program of this state to the fullest possible extent.

29 (3) In accordance with such plan and program for
30 the civil defense of this state, to procure supplies and
31 equipment, to institute training programs and public in-
32 formation programs, and to take all other preparatory
33 steps including the partial or full mobilization of civil de-
34 fense organizations in advance of actual disaster, to in-
35 sure the furnishing of adequately trained and equipped
36 forces of civil defense personnel in time of need.

37 (4) To make such studies and surveys of the indus-
38 tries, resources, and facilities in this state as may be neces-
39 sary to ascertain the capabilities of the state for civil de-
40 fense, and to plan for the most efficient emergency use
41 thereof.

42 (5) On behalf of this state, to enter into mutual aid ar-

43 rangements with other states and to coordinate mutual aid
44 plans between political subdivisions of this state.

45 (6) To delegate any administrative authority vested
46 in him under this act, and to provide for the subdelega-
47 tion of any such authority.

48 (7) To appoint, in cooperation with local authorities,
49 metropolitan area directors when practicable.

Sec. 6. *Mobile Reserve Battalions.*—The governor or his
2 duly designated representative is authorized to create
3 and establish such number of mobile reserve battalions
4 as may be necessary to reinforce civil defense organiza-
5 tions in stricken areas and with due consideration of the
6 plans of the federal government and of other states. He
7 shall appoint a commander for each such battalion who
8 shall have primary responsibility for the organization,
9 administration and operation of such battalion. Mobile
10 reserve battalions shall be called to duty upon orders of
11 the governor and shall perform their functions in any part
12 of the state, or, upon the conditions specified in this sec-
13 tion, in other states.

14 Personnel of mobile reserve battalions while on duty,

15 whether within or without the state, shall: (1) if they are
16 employees of the state, have the powers, duties, rights,
17 privileges and immunities and receive the compensation
18 incidental to their employment; (2) if they are employees
19 of a political subdivision of the state, and whether serving
20 within or without such political subdivision, have the
21 powers, duties, rights, privileges and immunities and re-
22 ceive the compensation incidental to their employment;
23 and (3) if they are not employees of the state or a
24 political subdivision thereof, be entitled to compensation
25 by the state at the same rate as is paid members of the
26 national guard and to the same rights and immunities
27 as are provided by law for the employees of this state.
28 All personnel of mobile reserve battalions shall, while
29 on duty, be subject to the operational control of the au-
30 thority in charge of civil defense activities in the area in
31 which they are serving, and shall be reimbursed for all
32 actual and necessary travel and subsistence expenses.

33 The state shall reimburse a political subdivision for the
34 compensation paid and actual and necessary travel, sub-
35 sistence and maintenance expenses of employees of such

36 political subdivision while serving as members of a mobile
37 reserve battalion, and for all payments for death, dis-
38 ability or injury of such employees incurred in the course
39 of such duty, and for all losses of or damage to supplies
40 and equipment of such political subdivision resulting from
41 the operation of such mobile reserve battalion.

42 Whenever a mobile reserve battalion of another state
43 shall render aid in this state pursuant to the orders of
44 the governor of its home state and upon the request of
45 the governor of this state, this state shall reimburse such
46 other state for the compensation paid and actual and neces-
47 sary travel, subsistence and maintenance expenses of the
48 personnel of such mobile reserve battalion while render-
49 ing such aid, and for all payments for death, disability
50 or injury of such personnel incurred in the course of
51 rendering such aid, and for all losses of or damage to
52 supplies and equipment of such other state or a political
53 subdivision thereof resulting from the rendering of such
54 aid, if the laws of such other state contain provisions sub-
55 stantially similar to this section.

56 No personnel of mobile reserve battalions of this state

57 shall be ordered by the governor to operate in any other
58 state unless the laws of such other state contain provisions
59 substantially similar to this section.

Sec. 7. *Local Organization for Civil Defense.*—Each po-
2 litical subdivision of this state is hereby authorized and
3 directed to establish a local organization for civil defense
4 in accordance with the state civil defense plan and pro-
5 gram. Each local organization for civil defense shall
6 have a director who shall be appointed by the local
7 civil defense council, and who shall have direct re-
8 sponsibility for the organization, administration and
9 operation of such local organization for civil defense,
10 subject to the direction and control of such local civil
11 defense council. Each local organization for civil de-
12 fense shall perform civil defense functions within the
13 territorial limits of the political subdivision within
14 which it is organized, and, in addition, shall conduct
15 such functions outside of such territorial limits as may
16 be required pursuant to the provisions of section eight of
17 this act.

18 In carrying out the provisions of this act each political

19 subdivision, in which any disaster as described in section
20 one hereof occurs, shall have the power to enter into
21 contracts and incur obligations necessary to combat such
22 disaster, protecting the health and safety of persons and
23 property, and providing emergency assistance to the vic-
24 tims of such disaster. Each political subdivision is author-
25 ized to exercise the powers vested under this section in
26 the light of the exigencies of the extreme emergency
27 situation without regard to time-consuming procedures
28 and formalities prescribed by law, (excepting mandatory
29 constitutional requirements), pertaining to the perform-
30 ance of public work, entering into contracts, the incurring
31 of obligations, the employment of temporary workers, the
32 rental of equipment, the purchase of supplies and mate-
33 rials, the levying of taxes, and the appropriation and ex-
34 penditure of public funds.

Sec. 8. *Mutual Aid Arrangements.*—The director of
2 each local organization for civil defense may, in collabor-
3 ating with other public and private agencies within this
4 state, develop or cause to be developed mutual aid ar-
5 rangements for reciprocal civil defense aid and assistance

6 in case of disaster too great to be dealt with unassisted.
7 Such arrangements shall be consistent with the state civil
8 defense plan and program, and in time of emergency it
9 shall be the duty of each local organization for civil de-
10 fense to render assistance in accordance with the pro-
11 visions of such mutual aid arrangements.

12 The director of each local organization for civil defense
13 may, subject to the approval of the governor, enter into
14 mutual aid arrangements with civil defense agencies or
15 organizations in other states for reciprocal civil defense
16 aid and assistance in case of disaster too great to be dealt
17 with unassisted.

Sec. 9. *Immunity.*—Neither the state nor any political
2 subdivision thereof, nor other agencies, nor, except in
3 cases of willful misconduct, the agents, employees, or
4 representatives of any of them, engaged in any civil de-
5 fense activities, while complying with or attempting to
6 comply with this act or any rule or regulation promul-
7 gated pursuant to the provisions of this act, shall be liable
8 for the death of or any injury to persons, or damage to
9 property, as a result of such activity. The provisions of

10 this section shall not affect the right of any person to
11 receive benefits to which he would otherwise be entitled
12 under this act, or under the workmen's compensation law,
13 or under any pension law, nor the right of any such per-
14 son to receive any benefits or compensation under any
15 act of congress.

Sec. 10. *Appropriations and Authority to Accept Serv-*
2 *ices, Gifts, Grants, and Loans.*—Each political subdivision
3 shall have the power to make appropriations in the man-
4 ner provided by law for making appropriations for the
5 ordinary expenses of such political subdivision for the
6 payment of expenses of its local organization for civil
7 defense.

8 Whenever the federal government or any agency or
9 officer thereof shall offer to the state, or through the state
10 to any political subdivision thereof, services, equipment,
11 supplies, materials, or funds by way of gift, grant or loan,
12 for purposes of civil defense, the state, acting through the
13 governor, or such political subdivision, acting with the
14 consent of the governor and through its executive officer
15 or governing body, may accept such offer and upon such

16 acceptance the governor of the state or executive officer
17 or governing body of such political subdivision may au-
18 thorize any officer of the state or of the political sub-
19 division, as the case may be, to receive such services,
20 equipment, supplies, materials, or funds on behalf of the
21 state or such political subdivision, and subject to the
22 terms of the offer and the rules and regulations, if any,
23 of the agency making the offer.

24 Whenever any person, firm or corporation shall offer to
25 the state or to any political subdivision thereof, services,
26 equipment, supplies, materials, or funds by way of gift,
27 grant or loan, for purposes of civil defense, the state,
28 acting through the governor, or such political subdivision,
29 acting through its executive officer or governing body,
30 may accept such offer and upon such acceptance the gov-
31 ernor of the state or executive officer or governing body
32 of such political subdivision may authorize any officer of
33 the state or of the political subdivision, as the case may
34 be, to receive such services, equipment, supplies, mate-
35 rials, or funds on behalf of the state or such political sub-
36 division, and subject to the terms of the offer.

Sec. 11. *Utilization of Existing Services and Facilities.*—

2 In carrying out the provisions of this act, the governor
3 and the executive officers or governing bodies of the
4 political subdivisions of the state are directed to utilize
5 the services, equipment, supplies and facilities of existing
6 departments, offices, and agencies of the state and of the
7 political subdivisions thereof to the maximum extent prac-
8 ticable, and the officers and personnel of all such depart-
9 ments, offices, and agencies are directed to cooperate with
10 and extend such services and facilities to the governor
11 and to the civil defense organizations of the state upon
12 request.

Sec. 12. *Political Activity Prohibited.*—No organization

2 for civil defense established under the authority of this
3 act shall participate in any form of political activity, nor
4 shall it be employed directly or indirectly for political
5 purposes.

Sec. 13. *Civil Defense Personnel.*—No person shall be

2 employed or associated in any capacity in any civil de-
3 fense organization established under this act who advo-
4 cates or has advocated a change by force or violence in

5 the constitutional form of the government of the United
6 States or in this state or the overthrow of any govern--
7 ment in the United States by force or violence, or who has
8 been convicted of or is under indictment or information
9 charging any subversive act against the United States.
10 Each person who is appointed to serve in an organization
11 for civil defense shall, before entering upon his duties,
12 take an oath, in writing, before a person authorized to ad-
13 minister oaths in this state, which oath shall be substan-
14 tially as follows:

15 "I, do solemnly swear,
16 or affirm, that I will support and defend the constitution
17 of the United States and the constitution of the state of
18 West Virginia, against all enemies, foreign and domestic;
19 that I will bear true faith and allegiance to the same; that
20 I take this obligation freely, without any mental reserva-
21 tion or purpose of evasion; and that I will well and faith-
22 fully discharge the duties upon which I am about to enter.
23 "And I do further swear, or affirm, that I do not ad-
24 vocate, nor am I a member of any political party or or-
25 ganization that advocates the overthrow of the govern-

26 ment of the United States or of this state by force or
27 violence; and that during such time as I am a member of
28 the..... (name of organization)....., I will not advocate
29 nor become a member of any political party or organiza-
30 tion that advocates the overthrow of the government of
31 the United States or of this state by force or violence.”

Sec. 14. *Separability*.—If any provision of this act or
2 the application thereof to any person or circumstance is
3 held invalid, such invalidity shall not affect other pro-
4 visions or applications of the act which can be given effect
5 without the invalid provision or application, and to this
6 end the provisions of this act are declared to be severable.

Sec. 15. *Enforcement*.—It shall be the duty of every
2 organization for civil defense established pursuant to this
3 act and of the officers thereof to execute and enforce such
4 orders, rules and regulations as may be made by the gov-
5 ernor under authority of this act. Each such organization
6 shall have available for inspection at its office all orders,
7 rules and regulations made by the governor, or under his
8 authority.

Sec. 16. This act shall expire two years from date of

2 passage, unless the Legislature at its next regular session,
3 shall provide otherwise.

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

Robert C. Byrd
Chairman Senate Committee

James W. Loop
Chairman House Committee

Originated in the House of Delegates

Takes effect 90 days from passage.

Thomas H. Keesee
Clerk of the Senate

J. R. Cliff
Clerk of the House of Delegates

F. Broughton Shelton
President of the Senate

W. E. Ramo
Speaker House of Delegates

The within approved this the 16th
day of March, 1951.

Chas. L. Patton
Governor



of West Virginia **MAR 16 1951**
D. PITT O'BRIEN,
SECRETARY OF STATE