WEST VIRGINIA CODE CHAPTER 15 ARTICLE 1J

WV Legislature

§15–1J-1. Short title.

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

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§15-1J-2. Legislative findings.

The Legislature finds that the West Virginia National Guard is a unique entity that has a dual mission for both West Virginia and the United States. In this dual capacity, the West Virginia National Guard receives funds to administer programs, including the hiring of employees, that the federal government, including the Department of Defense, provides to the guard in support of specific activities for various federal agencies for national security and homeland security purposes. These programs fulfill specific agency purposes and necessarily require continued funding by the federal government.

Additionally, the guard continues to receive federal funding to develop and maintain capabilities to house, refurbish, rebuild and maintain military equipment and conduct other test and operational activities to support national and homeland security objectives. These activities require the guard to enter into contracts and subcontracts for specialized technical services and hire persons who will be compensated, in whole or in part, with federal funds. It is further determined and declared that it is necessary for the guard to develop and implement a procedure for hiring and management of nonmilitary employees to support its specific missions.

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§15-1J-3. Definitions.

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

(a) "Authority" means the West Virginia Military Authority.

(b) "BRIM" means the West Virginia Board of Risk and Insurance Management.

(c) "Guard" means West Virginia National Guard, including its army and air components.

(d) "Employee" means any person who, within the at-will employment relationship, is hired to perform duties related to national security, homeland security and other military-related or -sponsored programs.

(e) "PEIA" means Public Employees Insurance Act.

(f) "PERS" means Public Employees Retirement System.

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

(a) The West Virginia Military Authority is hereby established to administer national security, homeland security, and other military-related or sponsored programs.

(b) The authority will be administered by the Adjutant General of the West Virginia National Guard.

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

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

(1) Execute cooperative agreements between the guard and the federal and/or state governments;

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

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

(4) Accept and use funds from the federal government, its instrumentalities and agencies, any state, territory, or the District of Columbia and its agencies and instrumentalities, municipalities, foreign governments, public bodies, private corporations, partnerships, associations, and individuals for the purposes of national security, homeland security, and other military-related or sponsored programs;

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

(6) Contract on behalf of the guard with the federal government, its instrumentalities, and agencies, any state, territory, or the District of Columbia and its agencies and instrumentalities, municipalities, foreign governments, public bodies, private corporations, partnerships, associations, and individuals for specialized technical services at a rate commensurate with industry standards as determined by the Adjutant General to support specific activities related to national security, homeland security, and other military-related programs;

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

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

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

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

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

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

(13) Purchase or contract under an established United States General Services Administration purchase programs, such as the General Services Administration Global Supply, catalogue, marketplace, or any other state or federal contract, platform, or program for the purchase of uniforms, safety equipment, personal protection equipment, firearms, supplies, materials, or for education textbooks, instructional materials, digital content resources, instructional technology, hardware, software, telecommunications, and technical services without application of the provisions of §5A-3-1 *et seq*. of this code: *Provided*, That nothing in this section would limit or prevent the State Auditor from performing an audit on any purchases made pursuant to this subdivision.

(e) There is hereby created in the State Treasury a special revenue account designated the Military Authority Fund which shall be administered by the Adjutant General. All revenues received from nonfederal government entities shall be deposited into the special revenue account and may be used by the Adjutant General in accordance with the provisions of this article.

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§15-1J-5. Employees.

(a) The authority may hire, administer, and manage employees necessary to fulfill its responsibilities.

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

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

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

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

(b) The Adjutant General shall set appropriate salary rates for employees equivalent to a competitive wage rate necessary to support a specific mission. If there is a federal government shutdown, furlough, or similar action, the Adjutant General may pay any furloughed employees during the period of such shutdown or furlough once federal funds are received for that period.

(c) Security guards and military firefighters hired by the authority under the provisions of this article will continue to have the same authority and must meet the requirements as set forth in §15-1B-22 of this code.

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§15-1J-6. Military Authority Reimbursable Expenditure Fund.

(a) A special revenue account known as the "Military Authority Reimbursable Expenditure Fund" is hereby established in the state treasury. The purpose of the fund is to make moneys available to the Military Authority for expenditures that qualify for cost reimbursement pursuant to a cooperative agreement, grant, or other legal agreement with the federal government.

(b) The Adjutant General shall administer the fund.

(c) The fund shall receive all moneys transferred to the fund pursuant to §36-8-13(e) of this code, any income from the investment of moneys held in the fund, and all moneys reimbursed into the fund pursuant to subsection (e) of this section.

(d) The Adjutant General may authorize expenditures from the fund that qualify for cost reimbursement pursuant to a cooperative agreement, grant, or other legal agreement with the federal government, including but not limited to the following:

(1) Expenditures for operations and maintenance of all facilities;

(2) Expenditures for major and minor construction;

(3) Any other types of expenditures related to homeland and national security missions; and

(4) Any other types of expenditures to support missions of the West Virginia National Guard.

(e) Upon receiving moneys from the federal government to reimburse the Military Authority for expenditures authorized by this section, the Adjutant General shall reimburse the fund in an amount equal to the moneys received from the federal government.

(f) Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall be transferred to the Unclaimed Property Fund.

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