WEST VIRGINIA CODE CHAPTER 15 ARTICLE 5

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§15-5-1. Policy and purpose.

In view of the existing and increasing possibility of the occurrence of disasters of unprecedented size and destructiveness and large-scale threats, resulting from terrorism, enemy attack, sabotage or other hostile action, or from fire, flood, earthquakes or other natural or man-made causes and in order to insure that preparations of this state will be adequate to deal with the disasters and large-scale threats, and generally to provide for the common defense and to protect the public peace, health and safety and to preserve the lives and property of the people of the state, it is found and declared to be necessary: (1) To create the Division of Homeland Security and Emergency Management and to authorize the creation of local and regional organizations for emergency services in the political subdivisions of the state; (2) to confer upon the Governor and upon the executive heads of governing bodies of the political subdivisions of the state the emergency powers provided herein; (3) to provide for the rendering of mutual aid among the political subdivisions of the state and with other states and to cooperate with the federal government with respect to the carrying out of emergency services and homeland security functions; and (4) to establish and implement comprehensive homeland security and emergency management plans to deal with such disasters and large-scale threats. It is further declared to be the purpose of this article and the policy of the state that all homeland security and emergency management funds and functions of this state be coordinated to the maximum extent with the Secretary of the Department of Military Affairs and Public Safety and with the comparable functions of the federal government including its various departments and agencies, of other states and localities and of private agencies of every type, so that the most effective preparation and use may be made of the nation's and this state's manpower, resources and facilities for dealing with any disaster or large-scale threat that may occur.

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§15-5-2. Definitions.

As used in this article:

"Code" means the Code of West Virginia, 1931, as amended;

"Community facilities" means a specific work, or improvement within this state, or a specific item of equipment or tangible personal property owned or operated by any political subdivision or nonprofit corporation and used within this state to provide any essential service to the general public;

"Critical infrastructure" includes any systems and assets, whether physical or virtual, so vital to the state that the incapacity or destruction of such systems and assets would have a debilitating impact on security, state economic security, state public health or safety, or any combination of those matters.

"Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural, or terrorist, or man-made cause, including weapons of mass destruction, fire, flood, earthquake, wind, snow, storm, chemical or oil spill or other water or soil contamination, epidemic, air contamination, blight, drought, infestation, or other public calamity requiring emergency action;

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

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

"Essential business activities" means a specific work or improvement within this state or a specific item of equipment or tangible personal property used within this state by any person

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to provide any essential goods or critical infrastructure services determined by the authority to be necessary for continued operations during a disaster, state of emergency, or state of preparedness, and for recovery from a disaster;

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

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

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

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

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

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

"Secretary" means the Secretary of the West Virginia Department of Homeland Security; and

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

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§15-5-3. Division of Emergency Management created.

(a) The Division of Homeland Security and Emergency Management is continued as the Division of Emergency Management, within the Department of Homeland Security. All of the allied, advisory, affiliated, or related entities, and funds associated with the Division of Homeland Security and Emergency Management and all its functions, personnel, and property are transferred to, incorporated in, and administered as a part of the Division of Emergency Management. Wherever the words "Office of Emergency Services" or "Division of Homeland Security and Emergency Management" appear in this code, they shall mean the Division of Emergency Management.

(b) A Director of the Division of Emergency Management shall be appointed by the Governor, by and with the advice and consent of the Senate. The Governor shall consider applicants for director who at a minimum: (1) Have at least five years managerial or strategic planning experience; (2) are knowledgeable in matters relating to public safety, homeland security, emergency management, and emergency response; and (3) have, at a minimum, a federally issued secret level security clearance or have submitted to or will submit to a security clearance investigation for the purpose of obtaining, at a minimum, a federally issued secret level security clearance.

(c) The director may employ such technical, clerical, stenographic, and other personnel, fix their compensation and make expenditures within the appropriation to the division or from other funds made available for the purpose of providing homeland security and emergency management services to carry out the purpose of this article. Beginning on the effective date of this section, all employees of the Division of Emergency Management are exempt from the Civil Service System: *Provided,* That employees of the Division of Homeland Security and Emergency Management who are currently members of the classified service, having been transferred to the Division of Emergency Management, retain their classified service as long as they remain in their current classification. Thereafter, if the employee leaves his or her current classification and maintains employment in the Division of Emergency Management, that employee, at that time, becomes transferred to the classified-exempt service as that term is defined in §29A-6-2 of this code.

(d) The director and other personnel of the Division of Emergency Management shall be provided with appropriate office space, furniture, equipment, supplies, stationery, and printing in the same manner as provided for personnel of other state agencies.

(e) The director, subject to the direction and control of the Governor through the Secretary of the Department of Homeland Security, shall be the executive head of the Division of Emergency Management and shall be responsible to the Governor and the Secretary of the Department of Homeland Security for carrying out the program for emergency management in this state. The director, in consultation with the Secretary of the Department of Homeland Security, shall coordinate the activities of all organizations for emergency management within the state and maintain liaison with and cooperate with homeland security, emergency management and other emergency service and civil defense agencies and organizations of

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other states and of the federal government, and shall have additional authority, duties, and responsibilities authorized by §15-5-1 *et seq.* of this code as may be prescribed by the Governor or the Secretary of the Department of Homeland Security.

(f) The director shall have the power to acquire in the name of the state by purchase, lease, or gift, real property and rights or easements necessary or convenient to construct thereon the necessary building or buildings for housing an emergency management control center.

(g) The director may, for the purposes of responding to a declared state of emergency or for the recovery from a declared state of emergency following the termination of the declaration, employ personnel or enter into contracts and subcontracts for goods or specialized technical services, subject to the following provisions:

(1) Employee positions shall be contingent on the receipt of the necessary federal and/or state funds.

(2) All employees employed pursuant to this subsection shall be exempt from both the classified services category and the classified exempt services category provided in §29-6-4 of this code.

(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 may participate in the PEIA, PERS, workers' compensation, unemployment compensation programs, or their equivalents.

(5) The director shall set appropriate salary rates for employees equivalent to a rate commensurate with industry standards.

(6) Contracts may be entered into pursuant to this subsection 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 director to support specific activities related to the response to or the recovery from a declared state of emergency.

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§15-5-4. West Virginia disaster recovery board created; organization of board; appointment of board members; term of office and expenses of board members; meetings.

[Repealed.]

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§15-5-4b. West Virginia Disaster Recovery Trust Fund disbursement.

[Repealed.]

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§15-5-4c. Powers and duties related to the West Virginia Disaster Recovery Trust Fund.

[Repealed.]

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§15-5-5. General powers of the Governor.

The Governor shall have general direction and control of the Office of Emergency Services and shall be responsible for the carrying out of the provisions of this article and, in the event of disaster beyond local control, may assume direct operational control over all or any part of the emergency services functions within this state.

In performing his duties under this article, the Governor is authorized to cooperate with the federal government, other states and private agencies in all matters pertaining to the provisions of emergency services for this state and the nation.

In performing his duties under this article to effect its policy and purpose, the Governor is further authorized and empowered:

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

(2) To prepare and implement a comprehensive plan and program for the provision of emergency services in this state, such plan and program to be integrated into and coordinated with comparable plans of the federal government and of other states to the fullest possible extent, and to coordinate the preparation of such plans and programs by the political subdivisions of this state, such plans to be integrated into and coordinated with the state plan and program to the fullest possible extent.

(3) In accordance with such state plan and program, to procure supplies and equipment, to institute training and public information programs, to take all other preparatory steps including the partial or full mobilization of emergency services organizations in advance of actual disaster and to insure the furnishing of adequately trained and equipped emergency services personnel in time of need.

(4) To make such studies and surveys of industries, resources and facilities in this state as may be necessary to ascertain the capabilities of the state for providing emergency services and to plan for the most efficient emergency use thereof.

(5) On behalf of the state, to enter into mutual aid arrangements with other states and to coordinate mutual aid plans between political subdivisions of this state.

(6) To delegate the administrative authority vested in him under this article, to provide for the delegation or transfer or both of the authority vested in the director under the provisions of this article, to any other person as the Governor in his discretion may direct, and to provide for the subdelegation of any such authority.

(7) To appoint a disaster recovery team composed of departmental heads, members of the executive, political subdivision representatives, technicians, members of the public and other representatives, the composition of which team shall reflect the character and extent of the

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disaster itself.

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

(9) To cooperate with the president and the heads of the Armed Forces, the civil defense agency of the United States and other appropriate federal officers and agencies and with the officers and agencies of other states in matters pertaining to the civil defense of the state and nation, including the direction and control of (a) blackouts and practice blackouts, air raid drills, mobilization of emergency services and civil defense forces and other tests and exercises; (b) warnings and signals for drills or attacks and the mechanical devices to be used in connection therewith; (c) the effective screening or extinguishing of all lights and lighting devices and appliances; (d) shutting off water mains, gas mains, electric power connections and the suspension of all other utility services; (e) the conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic during, prior and subsequent to drills or attack; (f) public meetings or gatherings; and (g) the evacuation and reception of the civilian population.

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§15-5-6. 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.

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

(b) The existence of a state of emergency may be proclaimed by the Governor by executive order or by concurrent resolution of the Legislature if the Governor in the proclamation, or the Legislature in the concurrent resolution, finds that conditions warranting the proclamation of a state of emergency, as defined in this article, exist, and that the health, safety, and welfare of the inhabitants of this state require an invocation of the provisions of this section: *Provided*, That a gubernatorially proclaimed state of emergency expires 60 days after issuance of the executive order unless, prior to the 60th day, the Legislature adopts a concurrent resolution extending the state of emergency beyond 60 days. A concurrent resolution adopted by the Legislature to extend a state of emergency proclaimed by the governor shall set forth within its terms the length of time for which the state of emergency shall be extended. A state of emergency, whether proclaimed by the Governor or by the Legislature, terminates upon the issuance of a proclamation of termination by the Governor, or the passage by the Legislature of a concurrent resolution terminating the state of emergency.

(c) The existence of a state of preparedness may be proclaimed by the Governor by executive order or by concurrent resolution of the Legislature, if the Governor in the proclamation or the Legislature in the resolution, finds that conditions warranting the proclamation of a state of preparedness, as defined in this article, exist, and that the health, safety, and welfare of the inhabitants of this state require the invocation of the provisions of this section: *Provided*, That the Governor or the Legislature shall proclaim a state of preparedness as a "Class I state of preparedness" or a "Class II state of preparedness", as defined in this article, by law: *Provided however*, That a gubernatorially proclaimed Class I state of preparedness expires 30 days after issuance of the executive order unless, prior to the 30th day, the Legislature adopts a concurrent resolution extending the state of preparedness beyond 30 days. A concurrent resolution adopted by the Legislature to extend a Class I state of preparedness proclaimed by the governor shall set forth within its terms the length of time for which the state of preparedness shall be extended. A Class II state of preparedness, whether proclaimed by the Governor of by the Legislature, terminates upon the issuance of a proclamation of termination by the Governor, or the passage by the Legislature of a concurrent resolution terminating the Class II state of preparedness.

(d) When a state of emergency follows a state of preparedness involving the same or substantially similar circumstances, the total time allotted for the duration of the two combined shall be no more than 90 days, unless the Governor follows the requirements for

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extending the state of emergency under subsection (b) of this section.

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

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

(2) A designation of the geographic area threatened.

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

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

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

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

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

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

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

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

(7) To suspend the provisions of any statute prescribing the procedures for the conduct of state business or the orders, or rules of any state agency, if strict compliance therewith would in any way prevent, hinder, or delay necessary action in coping with the emergency: *Provided*, That nothing in this subdivision may be construed as granting the Governor the power to suspend any provision of this section;

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

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

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

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

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

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

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

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

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

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

(k) Unless expressly authorized by an executive order of the Governor, a municipal, county,

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or state health officer, under color of a duly proclaimed state of emergency or state of preparedness, shall not take any enforcement action which is not authorized by statute.

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

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§15-5-6a. Temporary suspension of nutrition standards in public schools.

This section is operative only during the existence of a state of emergency or state of preparedness proclaimed by the Governor or by concurrent resolution of the Legislature. During a state of emergency or state of preparedness, the Governor or the Legislature may, to facilitate uninterrupted days of instruction, temporarily suspend legislative rules establishing nutrition standards for foods and beverages distributed to students in public schools during the school day: Provided, That safe alternative foods and beverages are available for distribution to students: Provided, however, That the temporary suspension of nutrition standards permitted by this section is limited to the geographic area affected by the state of emergency or state of preparedness and a report of any such action be made to the Joint Committee on Government and Finance.

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§15-5-7. Mobile support units.

The Governor or his duly authorized representative may create and establish such number of mobile support units as are necessary to reinforce emergency service organizations in stricken areas and with due consideration of the plans of the federal government and of other states. He shall appoint a commander for each such unit who shall have primary responsibility for the organization, administration and operation of such unit. A mobile support unit shall be called to duty upon order of the Governor and may function in any part of the state or, upon the conditions specified in this section, in other states.

Personnel of mobile support units while on duty, whether within or without the state, shall: (1) If they are employees of the state, have the powers, duties, rights, privileges and immunities and receive the compensation incidental to their employment; (2) if they are employees of a political subdivision of the state and whether serving within or without such political subdivision, have the powers, duties, rights, privileges and immunities and receive the compensation incidental to their employment; and (3) if they are not employees of the state or a political subdivision thereof, be entitled to compensation by the state at the same rate as is paid members of circuit court juries and to the same rights and immunities as are provided by law for the employees of this state. All personnel of mobile support units shall, while on duty, be subject to the operational control of the authority in charge of emergency service activities in the area in which they are serving and shall be reimbursed for all necessary travel and subsistence expenses actually incurred.

The state shall reimburse a political subdivision for the compensation paid and necessary travel, subsistence and maintenance expenses actually incurred of employees of such political subdivision while serving as members of a mobile support unit and for all payments for death, disability or injury of such employees incurred in the course of duty and for all losses of or damage to supplies and equipment of such political subdivision resulting from the operation of such mobile support unit.

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§15-5-8. Local organization for emergency services.

Each political subdivision of this state is hereby authorized and directed to establish a local organization for emergency services in accordance with the state plan and program for the provision of emergency services. Such political subdivision may confer or authorize the conferring upon members of the auxiliary police the powers of peace officers, subject to such restrictions as it may impose.

Each local organization for emergency services shall consist of a director and a local emergency services council and such other members as may be required. The director shall be appointed by the executive officer or governing body of the political subdivision to serve at the will and pleasure of the executive officer or governing body and such political subdivisions are authorized to provide adequate compensation for him The local council shall consist of five members, appointed by the executive officer or governing body of the political subdivision: Provided, That not more than three members thereof shall be members of the same political party. Council members shall serve a term of years staggered to provide continuity of service in accordance with local needs, without compensation, but shall be reimbursed for the reasonable and necessary expenses actually incurred in the performance of their duties.

The executive officer or governing body of the political subdivision shall have general direction and control of the local emergency services organization and shall be responsible for carrying out the provisions of this article. The director, subject to the direction and control of such executive officer or governing body, shall be executive head of the local emergency services organization and shall be directly responsible to the executive officer or governing body for the organization, administration and operation of the local emergency services program. The local council shall advise the director on all matters pertaining to emergency services. Each local organization shall perform emergency service functions within the territorial limits of the political subdivisions within which it is organized and, in addition, conduct such functions outside of such territorial limits as may be required pursuant to the provisions of sections nine and ten of this article.

In carrying out the provisions of this article each political subdivision in which any disaster as described in section one of this article occurs shall have the power to enter into contracts and incur obligations necessary to combat such disaster, protect the health and safety of persons and property and provide emergency assistance to the victims of such disaster. Each political subdivision is authorized to exercise its powers under this section in light of the exigencies of extreme emergency situations without regard to time-consuming procedures and formalities prescribed by law (excepting mandatory Constitutional requirements) pertaining to the performance of public work, entry into contracts, incurring of obligations, employment of temporary workers, rental of equipment, purchase of supplies and materials, levying of taxes and appropriation and expenditure of public funds.

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§15-5-9. Mutual aid agreements.

(a) The director of each local organization for emergency services may, in collaborating with other public and private agencies within this state, develop or cause to be developed mutual aid agreements for reciprocal aid and assistance in case of disaster too great to be dealt with unassisted. The agreements shall be made in conformity with the state plan and program for emergency services and, in time of emergency, each local organization shall render assistance in accordance with the state plan or the agreements.

(b) The director of each local organization may, subject to the approval of the Governor, enter into mutual aid agreements with emergency service and civil defense agencies or organizations in other states for reciprocal aid and assistance in case of disaster too great to be dealt with unassisted.

c) Notwithstanding the provisions of subsection (b) of this section, the director of each local organization may, regardless of the existence of a federally declared emergency or a state emergency declared by the Governor, or the Legislature, enter into mutual aid agreements with emergency services, civil defense agencies, and organizations of bordering counties in contiguous states for day-to-day mutual aid support for fire and emergency medical services.

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§15-5-10. Regional organizations for emergency services.

Regional organizations for emergency services may be established in the discretion of the Governor for any combination of political subdivisions. Each such organization shall be directed by the council which shall consist of the local directors, hereinbefore provided for in section eight of this article, of emergency services of the political subdivisions included in the region for which the organization is established. The local directors of emergency services shall designate the chairman, who may be one of the local directors, a private citizen or a local official, and may appoint committees representing different groups of interested citizens to assist them in the discharge of their duties. Members of such committees shall not be entitled to compensation for their services. The regional organizations and their members shall, in accordance with the state plan and program for emergency services, engage in such activities and perform such functions and duties as will further the provision of emergency services for the region and state. The emergency service organizations shall coordinate their activities with those of the regional planning and development councils in this state, and each local political subdivision included in the region shall pay its proportionate share of the ordinary expenses of such activities.

Any such organization may, within the limits of the funds made available for the purpose by the local political subdivisions included in the region or by the state, employ necessary personnel and fix their compensation, if any. Any such regional organization may be dissolved, reorganized or rearranged by the Governor whenever in his discretion such action is necessary.

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§15-5-11. Immunity and exemption; "duly qualified emergency service worker" defined.

(a) All functions hereunder and all other activities relating to emergency services are hereby declared to be governmental functions. Neither the state nor any political subdivision nor any agency of the state or political subdivision nor, except in cases of willful misconduct, any duly qualified emergency service worker complying with or reasonably attempting to comply with this article or any order, rule, regulation or ordinance promulgated pursuant to this article, shall be liable for the death of or injury to any person or for damage to any property as a result of such activity. This section does not affect the right of any person to receive benefits or compensation to which he or she would otherwise be entitled under this article, chapter twenty-three of this code, any Act of Congress or any other law.

(b) Any requirement for a license to practice any professional, mechanical or other skill does not apply to an authorized emergency service worker who shall, in the course of performing his or her duties, practice such skill during an emergency.

(c) As used in this section, "duly qualified emergency service worker" means:

(1) Any duly qualified full or part-time paid, volunteer or auxiliary employee of this state, or any other state, territory, possession or the District of Columbia, of the federal government, of any neighboring country or political subdivision thereof or of any agency or organization performing emergency services in this state subject to the order or control of or pursuant to the request of the state or any political subdivision thereof.

(2) Duly qualified instructors and properly supervised students in recognized educational programs where emergency services are taught. A recognized educational program shall include any program in an educational institution existing under the laws of this state and such other educational programs as shall be established by the Division of Homeland Security and Emergency Management or otherwise under this article.

(3) A member of any duly qualified mine rescue team designated by a mine operator pursuant to the provisions of section thirty-five, article one, chapter twenty-two-a of this code who is performing or engaging in emergency rescue services.

(d) A duly qualified emergency service worker performing his or her duty in this state pursuant to any lawful agreement, compact or arrangement for mutual aid and assistance to which the state or a political subdivision is a party shall possess the same powers, duties, immunities and privileges he or she would possess if performing the same duties in his or her own state, province or political subdivision thereof.

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§15-5-12. Liability to sheltered persons.

Any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege or otherwise permits the designation or use of the whole or any part of such real estate or premises for the purpose of sheltering persons during an actual, impending, mock or practice emergency shall, together with his successors in interest, if any, not be civilly liable for negligently causing the death of or injury to any sheltered person on or about such real estate or premises or for loss of or damage to the property of any such sheltered person.

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§15-5-13. Appropriations; acceptance of services, gifts, grants, and loans.

(a) Each political subdivision shall have the power to make appropriations in the manner provided by law for making appropriations for the ordinary expenses of such political subdivision for the payment of expenses of its local organization for emergency services or of its proportionate share of expenses of a regional organization for emergency services, or both.

(b) Whenever the federal government or any agency or officer thereof shall offer to any authority, corporation, partnership, or other entity, public or private or the state, or through the state to any political subdivision thereof, services, equipment, supplies, materials or funds by way of gift, grant or loan, for purposes relating to homeland security or emergency services, the state, after consultation and in coordination with the State Resiliency Officer and acting through the Governor, or a political subdivision after consultation and in coordination with the State Resiliency Officer and acting with the consent of the Governor and through its executive officer or governing body, may accept the offer. Upon acceptance, the Governor of the state or executive officer or governing body of the political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive services, equipment, supplies, materials or funds on behalf of the state or the political subdivision and subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer.

(c) Whenever any person, firm, or corporation shall offer to the state or to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan, for purposes relating to homeland security or emergency services, the state, after consultation and in coordination with the State Resiliency Officer and acting through the Governor, or the political subdivision after consultation and in coordination with the State Resiliency Officer and acting through its executive officer or governing body, may accept the offer. Upon acceptance, the Governor of the state or executive officer or governing body of the political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive services, equipment, supplies, materials, or funds on behalf of the state or the political subdivision and subject to the terms of the offer.

(d) The Governor may require any agency, authority, corporation, partnership, or other entity to furnish a report, in both written and electronic form, detailing the source and receipt of all services, equipment, supplies, materials, or funds for purposes relating to homeland security or emergency services as a condition of receiving these from the state. Within 10 days of the receipt of any reports required under this subsection, the Governor shall furnish copies thereof to the Legislature.

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§15-5-14. Political activity of emergency service organizations.

No organization for emergency services established under the authority of this article shall participate in any form of political activity, nor shall it be employed directly or indirectly for political purposes.

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§15-5-15. Emergency service personnel.

(a) No person may be employed or associated in any capacity in homeland security or any emergency service organization established under this article who has been convicted of a felony or who advocates or has advocated a change by force or violence in the Constitutional form of the government of the United States or this state or the overthrow of any government in the United States by force or violence or who has been convicted of or is under indictment or information charging any subversive act against the United States.

(b) Each person who is appointed to serve in an organization for homeland security or emergency services shall undergo a background check and shall, before entering upon his or her duties, take an oath, in writing, before a person authorized to administer oaths in this state, which shall be substantially as follows:

"I,_____, do solemnly swear or affirm that I will support and defend the Constitution of the United States and the Constitution of West Virginia against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or evasion; that I am not a convicted felon; and that I will faithfully and competently discharge the duties upon which I am about to enter.

"I do further swear or affirm that I do not advocate, nor am I a member of any political party or organization that advocates, the overthrow of the government of the United States or this state by force or violence; while I am a member of the (name of organization) I will not advocate or become a member of any political party or organization that advocates the overthrow of the government of the United States or this state by force or violence."

WV Legislature

§15-5-15a. Paid leave for disaster service volunteers.

Any state employee who is a certified disaster service volunteer of the American Red Cross may be granted leave from his or her state employment with pay, for not more than fifteen work days in each year, to participate in specialized disaster relief services for the American Red Cross. Leave shall be granted under this section upon the request of the American Red Cross for the services of that employee and only upon the approval of that employee's immediate supervisor. Leave shall be granted without loss of pay, annual leave, sick leave, earned overtime compensation, seniority or compensatory time. The state shall compensate an employee granted leave under this section at the employee's regular rate of pay for those regular work hours during which the employee is absent from his or her state employment. Any supervisor granting leave to an employee for purposes of participating in specialized disaster relief shall make a report to the Governor which includes the name of the employee and the cost of salary and benefits of that employee during the period of the leave. The Governor shall keep a record of the total cost of the salary and benefits of employees who have been granted leave and in no event shall the total cost for all state agencies exceed $100,000: Provided, That upon approval of the Governor and repayment of the cost to the employing agency, from the civil contingent fund, leave may be granted in an excess of a total cost of $100,000 if a state of emergency has been proclaimed pursuant to section six of this article.

WV Legislature

§15-5-15b. Paid leave for certain state officers and employees during a declared state of emergency.

(a) Any state employee who is designated an essential member of an emergency aid provider may be granted leave from his or her state employment with pay, for not more than fifteen work days in each year, to provide disaster relief or emergency services in areas of the state in which a state of emergency has been declared. Leave shall be granted under this section upon: (1) Designation of the employee as an essential member by the chief executive officer or other officer or agent of the emergency aid provider who has authority to act on its behalf; and (2) approval of that employee's immediate supervisor. Leave shall be granted without loss of pay, annual leave, sick leave, earned overtime compensation, seniority or compensatory time. The state shall compensate an employee granted leave under this section at the employee's regular rate of pay for those regular work hours during which the employee is absent from his or her state employment. Any supervisor granting leave to an employee for purposes of participating in disaster relief or emergency services pursuant to this section shall make a report to the Governor which includes the name of the employee and the total cost, if any, to the employing agency attributable to the temporary replacement of the employee granted leave in the circumstance where replacement is necessary. The Governor shall keep a record of the total cost reported and in no event may the total cost for all state agencies exceed $300,000: Provided, That upon approval of the Governor and repayment of the cost to the employing agency, from the Civil Contingent Fund, leave may be granted in an excess of a total cost of $300,000.

(b) Notwithstanding the provisions of this section to the contrary, no person may be designated an essential member of an emergency aid provider for purposes of this section, if the person is employed by an emergency aid provider located in or that customarily serves an area included within the state of emergency.

(c) As used in this section:

(1) "Emergency aid provider" means a local organization for emergency services as defined by section two, article five, chapter fifteen of this code or a volunteer fire department that is providing emergency services during a state of emergency as a result of the circumstances that resulted in the declaration of the state of emergency;

(2) "Essential member" means a person designated by an emergency aid provider whose services are needed to provide emergency services due to the circumstances that resulted in the declaration of the state of emergency;

(3) "State of emergency" means the situation existing after the occurrence of a disaster or circumstance in which a state of emergency has been declared by the Governor or by the Legislature pursuant to the provisions of section six of this article or in which a major disaster declaration or emergency declaration has been issued by the President of the United States.

WV Legislature

§15-5-16. Utilization of existing services and facilities.

In carrying out the provisions of this article, the Governor, the chairmen of the regional councils and the executive officers or governing bodies of the political subdivisions of the state are directed to utilize the services, equipment, supplies and facilities of existing departments, offices and agencies of the state and of the political subdivisions to the maximum extent practicable, and the officers and personnel of all such departments, offices and agencies are directed to cooperate with and extend such services and facilities to the Governor and to emergency service organizations of the state upon request.

WV Legislature

§15-5-17. Enforcement.

It shall be the duty of every organization for emergency services established pursuant to this article and of the officers thereof to execute and enforce such orders, rules and regulations as may be made by the Governor under this article. Each such organization shall have at its office available for public inspection all such orders, rules and regulations of the Governor.

WV Legislature

§15-5-18. Arrest by peace officer without warrant.

A peace officer, when in uniform or displaying a badge or other insignia of authority, may arrest without a warrant any person violating or attempting to violate in such officer's presence any order, rule or regulation made pursuant to this article. This authority shall be limited to arrest for violations of those orders, rules and regulations which affect the public generally.

WV Legislature

§15-5-19. Unorganized militia.

The unorganized militia shall, at the call of the Governor, be available for duty with the emergency service forces of this state. For purposes of this article, the unorganized militia shall consist of all able-bodied men and women between the ages of sixteen and fifty.

WV Legislature

§15-5-19a. Possession of firearms during a declared state of emergency.

(a) Notwithstanding any other provision of law to the contrary, the transport, storage, transfer, sale, commerce in, import and export of, distribution, repair, maintenance, and manufacture of firearms, ammunition, and related accessories and components, and other goods and services directly related to lawful firearm possession, use, storage, repair, maintenance, and training in the use of firearms, are declared to be "essential" businesses and services for the purposes of safety and security in times of declared emergency or any other statutorily authorized responses to disaster, war, acts of terrorism, riot or civil disorder, or emergencies of whatever kind or nature.

(b) Except as provided in this section, no state agency, political subdivision, or any elected or appointed official or employee thereof, may, under any governmental authority or color of law exercised as part of any statutorily authorized responses to disaster, war, acts of terrorism, riot or civil disorder, or as part of any federal or state declared state of emergency or preparedness of whatever kind or nature:

(1) Prohibit or restrict the otherwise lawful possession, use, carrying, transfer, transportation, storage, sale, display, or other lawful use of a firearm or ammunition, any firearm or ammunition component or accessory, ammunition reloading equipment and supplies, or personal weapons other than firearms;

(2) Seize, confiscate, or authorize the seizure or confiscation of any otherwise lawfully possessed firearm or ammunition, any firearm or ammunition component or accessory, ammunition reloading equipment and supplies, or otherwise lawful personal weapons other than firearms unless:

(A) The person acting on behalf of or under the authority of the state, a county, or municipality is:

(i) Defending himself or herself or another from an assault; or

(ii) Arresting a person in actual possession of a firearm or ammunition for a violation of law; or

(B) The firearm or ammunition is being seized or confiscated as evidence of a crime;

(3) Require registration of any firearm or ammunition, any firearm or ammunition component or accessory, ammunition reloading equipment and supplies, or otherwise lawful personal weapons other than firearms;

(4) Suspend or revoke a license to carry a concealed deadly weapon or provisional license to carry a concealed deadly weapon issued pursuant to §61-7-1 *et seq*. of this code except as expressly authorized in that article;

(5) Willfully refuse to accept an application for a license to carry a concealed deadly weapon

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or provisional license to carry a concealed deadly weapon, provided the application has been properly completed in accordance with §61-7-1 *et seq*. of this code;

(6) Close or limit the operating hours of any entity engaged in the lawful selling or servicing of any firearm, including any component or accessory, ammunition, ammunition reloading equipment and supplies, or personal weapons other than firearms;

(7) Close or limit the operating hours of any indoor or outdoor shooting range; or any entity engaged in providing firearms safety training or firearms safety instructor courses, classes, or programs;

(8) Place restrictions or quantity limitations on any entity regarding the lawful sale or servicing of any firearm or ammunition, any firearm or ammunition component or accessory, ammunition reloading equipment and supplies, or personal weapons other than firearms; or

(9) Suspend, restrict, or prohibit otherwise lawful hunting or fishing activities

(c) The prohibitions of §15-5-19a(b)(1) do not prohibit the state or an authorized state or local authority from ordering and enforcing an evacuation or general closure of businesses in the affected area during a declared state of emergency.

(d)(1) If a license to carry a concealed deadly weapon or provisional license to carry a concealed deadly weapon has been issued to a person pursuant to §61-7-4 of this code, and if the date that the valid and subsisting license would or is scheduled to expire falls within the period of emergency declared by the Governor's executive order or the 14 days immediately preceding that declaration, then, notwithstanding the date of scheduled expiration, the duration of that license is automatically extended for a period of 60 days commencing from the date of the license’s scheduled expiration or 30 days commencing from the termination of the state of emergency, whichever is later.

(2) If §15-5-19a(d)(1) of this subsection applies with respect to a license to carry a concealed deadly weapon or provisional license to carry a concealed deadly weapon, then during the extension period described in that section that is applicable to that license, all of the following apply:

(A) The license shall be valid for all purposes under the laws of this state and the person to whom the license was issued shall be considered for all purposes under the laws of this state to be the holder of a valid license to carry a concealed handgun;

(B) The license remains subject to the operation of §61-7-1, *et seq*., of this code during the extended period of the license and at any other time; and

(C) Except for the date of scheduled expiration, all other conditions, and restrictions otherwise applicable to the license and the license holder continue to apply during the extended period of the license and at any other time.

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(e) This section shall not apply to the following:

(1) The authority of a chief administrative officer of a political subdivision with police powers to prohibit the sale, offering for sale, dispensing, or transportation of firearms or other dangerous weapons, ammunition, dynamite, or other dangerous explosives in, to, or from a cordoned-off area when engaged in suppressing a riot or when there is a clear and present danger of a riot as that term is delineated in §15-1D-1 et. seq. of this code;

(2) The ability of a law-enforcement officer to remove firearms or ammunition from any person pursuant to other lawful authority: *Provided*, That before releasing the individual, the law-enforcement officer shall return to the individual any seized firearms and ammunition, and components thereof, and any firearms accessories and ammunition-reloading equipment and supplies, unless:

(A) The officer takes the individual into physical custody for engaging in criminal activity or for observation; or

(B) Seizes the items as evidence pursuant to an investigation for the commission of a crime; or

(3) A zoning ordinance that specifies the hours of operation or the geographic areas where the commercial sale of firearms, firearm components, or ammunition for firearms may occur: *Provided*, that the zoning ordinance is consistent with the provisions of §8-12-5a(h)(2) of this code.

(f)(1) Any individual, person, group, or entity adversely affected by a violation of this section, or by any manner of law, ordinance, rule, regulation, resolution, practice, or other action enacted or enforced in violation of the provisions of this section, may seek relief in an action at law or in equity for damages, injunctive relief, declaratory relief, or other appropriate redress against any state agency, county, municipality, or other political subdivision of this state, or against any elected or appointed official or employee of this state, a county, municipality or any other political subdivision of this state, that subjects the individual, or causes the individual, to be subjected, to an action prohibited by this section.

(2) Such suit may be filed:

(A) In the court having jurisdiction over the county in which the aggrieved person resides, or group or entity is located, or in which the violation occurred; or

(B) In the case of an action by the state or any state agency, in the circuit court of Kanawha County.

(g) In addition to any other remedy at law or in equity, an individual who is adversely affected by the seizure or confiscation of any firearm or ammunition component or accessory, ammunition reloading equipment and supplies, or otherwise lawful personal weapons other than firearms in violation of this section:

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(1) May bring an action for the return of the seized or confiscated property in the circuit court of the county in which that individual resides or in which the seized or confiscated property is located and, except where those weapons have been seized as part of a lawful arrest as provided in §15-5-19a(d)(2), that court shall order the immediate return of the items by the seizing or confiscating governmental office and that office's employed officials; and

(2) That individual shall also be entitled to recover a civil penalty for damages, in the amount of $5,000 per violation, against any person who violates the seizure or confiscation restrictions in this section.

(3) A prevailing plaintiff in an action brought under §15-5-19a(f) or §15-5-19a(g) is also entitled to recover the following:

(A) Actual damages, including consequential damages;

(B) Court costs and fees; and

(C) Reasonable attorney’s fees.

(4) And, any award to a prevailing plaintiff under the provisions of §15-5-19a(f) or §15-5-19a(g) may be awarded regardless of whether the law, ordinance, rule, regulation, resolution, practice, or action or the manner of its enforcement is repealed or rescinded, or, expires after the civil action was filed but prior to a final court determination of the action.

WV Legislature

§15-5-19b. Criminal penalties for using automated telephone calls to disseminate false, misleading or deceptive information regarding matters effecting or effected by a proclaimed state of emergency or state of preparedness.

(a) Any person or entity who, during a state of emergency or state of preparedness declared pursuant to the provisions of section six of this article: (1) Knowingly and willfully disseminates false, misleading or deceptive information regarding matters effecting or effected by the declaration; and (2) by means of an automated telephone call or calling device, including, but not limited to, technology designed to disseminate a previously recorded message shall be guilty of a misdemeanor and, upon conviction thereof, be confined in jail for not more than one year or fined not more than $5,000, or both.

(b) For purposes of this section each call made shall constitute a separate violation of this section.

WV Legislature

§15-5-20. Disaster prevention.

(a) In addition to disaster prevention measures as included in the state, local, regional and interjurisdictional disaster plans, the Governor shall consider on a continuing basis steps that could be taken to prevent or reduce the harmful consequences of disasters. At his or her direction, and pursuant to any other authority and competence they have, state agencies, including, but not limited to, those charged with responsibilities in connection with floodplain management, stream encroachment and flow regulation, weather modification, fire prevention and control, air quality, public works, land use and land-use planning and construction standards, shall make studies of disaster prevention-related matters. The Governor, from time to time, shall make such recommendation to the Legislature, political subdivisions and other appropriate public and private entities as may facilitate measures for prevention or reduction of the harmful consequences of disasters.

(b) At the request of and in conjunction with the Office of Emergency Services, the divisions of energy, natural resources and highways and any state department insured by the Board of Risk and Insurance Management shall keep land use and construction of structures and other facilities under continuing study and identify areas which are particularly susceptible to severe land shifting, subsidence, flooding or other catastrophic occurrences. Such studies shall concentrate on means of reducing or avoiding the dangers caused by such occurrences and the consequences thereof.

WV Legislature

§15-5-20a. Floodplain manager training.

(a) Community participation in the National Flood Insurance Program is important to manage and mitigate the special flood hazard areas in West Virginia. Therefore, all state, county, municipality and local floodplain managers should be adequately trained in floodplain management.

(b) Commencing July 1, 2012, each floodplain manager in the state is required to complete six hours of training in floodplain management annually to maintain good standing with the West Virginia Division of Emergency Management.

(c) A governmental unit that has a floodplain manager who fails to obtain the required training shall suspend the floodplain manager from his or her floodplain management responsibilities until the training requirement is met.

WV Legislature

§15-5-20b. Continuation of the State Office of the National Flood Insurance Program; transfer to the Division of Emergency Management; funding; responsibilities.

(a) The Legislature, finding that the National Flood Insurance Program is a voluntary federal program under which federal flood insurance is made available to participating communities and is of vital importance to the citizens of West Virginia, does hereby continue the State Office of the National Flood Insurance Program. Effective July 1, 2022, the State Office of the National Flood Insurance Program shall transfer from the Offices of the Insurance Commissioner to the Division of Emergency Management established pursuant to §15-5-3 of this code. The Division of Emergency Management shall provide office space, equipment, and supplies for the State Office of the National Flood Insurance Program, which shall be funded, in part, from the special revenue fund established in §33-3-14(c) of this code.

(b) The State Office of the National Flood Insurance Program shall issue guidance and instructions as necessary to administer the program effectively. The State Office of the National Flood Insurance Program shall offer and conduct training as required by §15-5-20a of this code and adopt adequate land use and development criteria that are consistent with the minimum standards established by the National Flood Insurance Program. The State Office of the National Flood Insurance Program shall be under the supervision of the Director of the Division of Emergency Management who shall employ staff as needed to operate the program.

(c) The Director of the Division of Emergency Management may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code as necessary to administer the State Office of the National Flood Insurance Program and any of the program's responsibilities. Any state-owned property located in a non-participating local community shall be governed by rules proposed by the Director of the Division of Emergency Management.

(d) The State Office of the National Flood Insurance Program, in consultation with the Director of the Division of Emergency Management, and with the assistance of floodplain managers around the state, shall develop and publish a strategic plan to establish shared goals, define a path to meet those goals, and shall invite other governmental units to adopt these goals and objectives. The strategic plan shall be initially presented by the Director of the Division of Emergency Management to the State Resiliency Officer and to the State Resiliency Office Board who shall review and approve the strategic plan, and that plan shall be so presented and approved no less than biannually thereafter. The strategic plan shall be made available to the public.

(e) The State Office of the National Flood Insurance Program shall establish floodplain management guidelines for any state property in special hazard areas which, at a minimum, satisfy the criteria set forth in 44 CFR §§60.3, 60.4, and 60.5 (2022).

(f) Notwithstanding any other provision of this code to the contrary, the State Office of the

National Flood Insurance Program shall cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties.

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§15-5-21. Communications.

The Office of Emergency Services shall ascertain what means exist for rapid and efficient communication in times of disaster. The office shall consider the desirability of supplementing such communication resources or of integrating them into a comprehensive state or federal-state telecommunications or other communications system or network. In studying the character and feasibility of any system or its several parts, the office shall evaluate the possibility of multipurpose use thereof for various state, regional and local governmental purposes. The office shall make recommendations to the Governor as appropriate.

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§15-5-22. Emergency Management Assistance Compact.

The "Emergency Management Assistance Compact" is hereby approved, ratified, adopted, enacted into law and entered into by the State of West Virginia with all other jurisdictions legally joining therein in accordance with its terms, in a form substantially as follows:

EMERGENCY MANAGEMENT ASSISTANCE COMPACT

ARTICLE I - PURPOSE AND AUTHORITIES

This compact is made and entered into by and between the participating member states which enact this compact, hereinafter called party states. For the purposes of this agreement, the term "states" is taken to mean the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all United States territorial possessions.

The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency or disaster that is duly declared by the Governor of the affected state(s), whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency or enemy attack.

This compact shall also provide for mutual cooperation in emergency-related exercises, testing or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' National Guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

ARTICLE II - GENERAL IMPLEMENTATION

Each party state entering into this compact recognizes many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the federal government or any other source, that are essential to the safety, care and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this compact shall be understood.

On behalf of the Governor of each state participating in the compact, the legally designated

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state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

ARTICLE III - PARTY STATE RESPONSIBILITIES

(a) It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:

(1) Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, emergency aspects of resource shortages, civil disorders, insurgency or enemy attack.

(2) Review party states' individual emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency.

(3) Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans.

(4) Assist in warning communities adjacent to or crossing the state boundaries.

(5) Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services and resources, both human and material.

(6) Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness.

(7) Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above responsibilities.

(b) The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this agreement shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within thirty days of the verbal request. Requests shall provide the following information:

(1) A description of the emergency service function for which assistance is needed, such as but not limited to fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and

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search and rescue.

(2) The amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed.

(3) The specific place and time for staging of the assisting party's response and a point of contact at that location.

(c) There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States government, with free exchange of information, plans and resource records relating to emergency capabilities.

ARTICLE IV - LIMITATIONS

Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof: Provided, That it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state.

Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the Governor of the party state that is to receive assistance or commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect or loaned resources remain in the receiving state(s), whichever is longer.

ARTICLE V - LICENSES AND PERMITS

Whenever any person holds a license, certificate or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the Governor of the requesting state may prescribe by executive order or otherwise.

ARTICLE VI - LIABILITY

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Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence or recklessness.

ARTICLE VII - SUPPLEMENTARY AGREEMENTS

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party hereto, this instrument contains elements of a broad base common to all states, and nothing herein contained shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

ARTICLE VIII - COMPENSATION

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

ARTICLE IX - REIMBURSEMENT

Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such requests: Provided, That any aiding party state may assume, in whole or in part, such loss, damage, expense or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost: Provided, however, That any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses shall not be reimbursable under this provision.

ARTICLE X - EVACUATION

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the party states and the emergency

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management/services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies and all other relevant factors. Such plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. Such expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

ARTICLE XI - IMPLEMENTATION

(a) This compact shall become operative immediately upon its enactment into law by any two states; thereafter, this compact shall become effective as to any other state upon its enactment by such state.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until thirty days after the Governor of the withdrawing state has given notice in writing of such withdrawal to the Governors of all other party states. Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

(c) Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the federal emergency management agency and other appropriate agencies of the United States government.

ARTICLE XII - VALIDITY

This compact shall be construed to effectuate the purposes stated in Article I hereof. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the Constitutionality of the remainder of this compact and the applicability thereof to other persons and circumstances shall not be affected thereby.

ARTICLE XIII - ADDITIONAL PROVISIONS

Nothing in this compact shall authorize or permit the use of military force by the National Guard of a state at any place outside that state in any emergency for which the President is

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authorized by law to call into federal service the militia, or for any purpose for which the use of the Army or the Air Force would in the absence of express statutory authorization be prohibited under Section 1385 of Title 18, United States Code.

ARTICLE XIV - REPORTING TO LEGISLATURE

The director of the Office of Emergency Services shall, on or before January 1, 1997, provide to the Joint Committee on Government and Finance copies of all mutual aid plans and procedures promulgated, developed or entered into after the effective date of this section. The director shall annually thereafter provide the Joint Committee on Government and Finance with copies of all new or amended mutual aid plans and procedures on or before January 1, of each year.

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§15-5-23. Severability; conflicts.

(a) If any section, subsection, subdivision, provision, clause or phrase of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other sections, subsections, subdivisions, provisions, clauses or phrases or applications of the article, and to this end each and every section, subsection, subdivision, provision, clause and phrase of this article is declared to be severable. The Legislature hereby declares that it would have enacted the remaining sections, subsections, provisions, clauses and phrases of this article even if it had known that any section, subsection, subdivision, provision, clause and phrase thereof would be declared to be unconstitutional or invalid, and that it would have enacted this article even if it had known that the application thereof to any person or circumstance would be held to be unconstitutional or invalid.

(b) The provisions of subsection (a) of this section shall be fully applicable to all future amendments or additions to this article, with like effect as if the provisions of said subsection (a) were set forth in extenso in every such amendment or addition and were reenacted as a part thereof.

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§15-5-24. Disaster Recovery Trust Fund; disbursement of funds.

[Repealed.]

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§15-5-25. Prohibition on funds inuring to the benefit of or being distributable to members, officers or private persons.

[Repealed.]

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§15-5-26. Tax exemption.

[Repealed.]

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§15-5-27. Annual report.

[Repealed.]

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§15-5-28. Statewide mutual aid system.

(a) The Legislature hereby finds that emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential for the protection of lives and property and for the best use of available assets, both public and private. The purpose of this section is to create a system of intrastate mutual aid between participating political subdivisions in the state. The system shall provide for mutual assistance among the participating political subdivisions in the prevention of, response to and recovery from any disaster that results in a formal state of emergency or state of preparedness in a participating political subdivision, subject to that participating political subdivision's criteria for declaration. The system shall provide for mutual cooperation among the participating subdivisions in conducting disaster-related exercises, testing or other training activities outside actual declared emergency periods. This section provides no immunity, rights or privileges for any individual responding to a state of emergency or state of preparedness that is not requested or authorized to respond by a participating political subdivision. Participating political subdivisions will be ensured, to the fullest extent possible, eligibility for state and federal disaster funding.

(b) Upon the enactment of this legislation, all political subdivisions within the state are members of the statewide mutual aid system: Provided, That a political subdivision within the state may elect not to participate or to withdraw from the system upon the enactment of an appropriate resolution by its governing body declaring that it elects not to participate in the statewide mutual aid system. A copy of any such resolution shall be provided to the Division of Homeland Security and Emergency Management.

(c) This section does not preclude participating political subdivisions from entering into supplementary agreements with another political subdivision and does not affect any other agreement to which a political subdivision may currently be a party to, or decide to be a party to.

(d) "Emergency responder", as used in this article, shall mean anyone with special skills, qualifications, training, knowledge and experience in the public or private sectors that would be beneficial to a participating political subdivision in response to a locally declared emergency as defined in any applicable law or ordinance or authorized drill or exercises; and who is requested and authorized to respond. Under this definition, an emergency responder may be required to possess a license, certificate, permit or other official recognition for his or her expertise in a particular field or area of knowledge. An emergency responder could include, but is in no way limited to, the following: Law-enforcement officers, firefighters, emergency medical services personnel, physicians, nurses, other public health personnel, emergency management personnel, public works personnel, local emergency debris removal teams, those persons with specialized equipment operations skills or training or any other skills needed to provide aid in a declared emergency.

(e) It shall be the responsibility of each participating political subdivision with jurisdiction over and responsibility for emergency management within that certain subdivision to do all

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of the following:

(1) Identify potential hazards that could affect the participant using an identification system common to all participating jurisdictions.

(2) Conduct joint planning, intelligence sharing and threat assessment development with contiguous participating political subdivisions and conduct joint training at least biennially.

(3) Identify and inventory the current services, equipment, supplies, personnel and other resources related to planning, prevention, mitigation, response and recovery activities of the participating political subdivision.

(4) Adopt and implement the National Incident Management System approved by the State of West Virginia.

(f) A participating political subdivision may request assistance of other participating political subdivisions in preventing, mitigating, responding to and recovering from disasters that result in locally declared emergencies or in concert with authorized drills or exercises as allowed under this section. Requests for assistance shall be made to the Division of Homeland Security and Emergency Management through the designated county emergency management director by the chief executive officer of a participating political subdivision, or his or her designee, for response. Requests may be verbal or in writing. Verbal requests will be followed up with a written request as soon as is practical or such number of days as the state, in its discretion, may dictate.

(g) The obligation of a participating political subdivision to provide assistance in the prevention of, response to and recovery from a locally declared emergency or in authorized drills or exercises is subject to the following conditions:

(1) A participating political subdivision requesting assistance must have either declared a state of emergency in the manner outlined in this section or authorized drills and exercises;

(2) A responding participating political subdivision may withhold resources to the extent necessary to provide reasonable protection and services for its own jurisdiction;

(3) Emergency response personnel of a responding participating political subdivision shall continue under the command and control of their responding jurisdiction to include medical protocols, standard operating procedures and other protocols, but shall be under the operational control of the appropriate officials within the National Incident Management System of the participating political subdivision receiving the assistance; and

(4) Assets and equipment of a responding participating political subdivision shall continue under the control of the responding jurisdiction, but shall be under the operational control of the appropriate officials within the National Incident Management System of the participating political subdivision receiving the assistance.

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(h) If a person or entity holds a license, certificate or other permit issued by a participating political subdivision or the state evidencing qualification in a professional, mechanical or other skill and the assistance of that person or entity is requested by a participating political subdivision, the person or entity shall be deemed to be licensed, certified or permitted in the political subdivision requesting assistance for the duration of the declared emergency or authorized drills or exercises and subject to any limitations and conditions the chief executive of the participating political subdivision receiving the assistance may prescribe by executive order or otherwise.

(i) (1) Any requesting political subdivision shall reimburse the participating political subdivision rendering aid under this system provided the request for aid is authorized by the Division of Homeland Security and Emergency Management. A participating political subdivision providing assistance may determine to donate assets of any kind to a receiving participating political subdivision.

(2) Should a dispute arise between parties to the system regarding reimbursement, involved parties will make every effort to resolve the dispute within thirty days of written notice of the dispute by the party asserting noncompliance. In the event that the dispute is not resolved within ninety days of the notice of the claim, either party may request the dispute be solved through arbitration. Any arbitration under this provision shall be conducted under the commercial arbitration rules of the American Arbitration Association.

(j) Personnel of a participating political subdivision responding to or rendering assistance for a request who sustain injury or death in the course of, and arising out of, their employment are entitled to all applicable benefits normally available to personnel while performing their duties for their employer. Responders shall receive any additional state and federal benefits that may be available to them for line-of-duty deaths.

(k) All activities performed under this section are deemed hereby to be governmental functions. For the purposes of liability, all persons responding under the operational control of the requesting political subdivision are deemed to be employees of the requesting participating political subdivision.

(l) Whenever the law-enforcement officials of any political subdivision are rendering outside aid pursuant their lawful authority, and with the approval of the Director of the West Virginia Division of Homeland Security and Emergency Management, and under the authority of a state of emergency or state of preparedness as officially proclaimed by the Governor, such law-enforcement officials shall have the same authority, powers, duties, rights, privileges and immunities as if they were performing their law-enforcement duties in the political subdivisions in which they are normally employed. The authority vested in the law-enforcement official, in accordance with this section, shall vest upon reporting in person to the Emergency Management Agency official in charge and on duty at the county or city of destination assignment. The law-enforcement official shall act under the authority, supervision and control of the highest ranking law-enforcement official within the assigned outside jurisdiction. Law enforcement and powers of arrest authority will not attach to the

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law-enforcement official while in transit from his or her jurisdiction of origin en route to his or her assigned jurisdiction under intrastate mutual aid assistance.

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§15-5-29. Cooperation with State Resiliency Office.

Notwithstanding any other provision of this code to the contrary, the Director of the Division of Emergency Management shall cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties.

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§15-5-30. State of emergency; state of preparedness; essential workers.

(a) During a state of emergency or state of preparedness, set forth by the Governor, employees of public utilities, cable television operators, telecommunications carriers, and publicly or privately owned water and sewer systems shall be considered essential workers to ensure that these services can continue to operate or be restored.

(b) Contractors, vendors, and suppliers of public utilities, cable television operators, telecommunications carriers, and publicly or privately owned water and sewer systems of the state shall be considered essential workers to aid the utilities and telecommunications services in continuation of services to its customers.

(c) The provisions of subsections (a) and (b) of this section apply only and specifically for the purpose of ensuring that public utilities, cable television operators, telecommunications carriers, and publicly or privately owned water and sewer systems can continue to operate or be restored and may not be construed or interpreted in any way to have any relevance or meaning beyond this specific purpose.

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