WEST VIRGINIA CODE CHAPTER 29 ARTICLE 31

WV Legislature

§29-31-1. Short title; legislative findings; purpose.

(a) This article may be known and cited as the "Resiliency and Flood Protection Planning Act".

(b) The West Virginia Legislature finds that:

(1) Flooding has affected each of the 55 counties and 32 major watersheds within the state;

(2) Over the past 52 years, more than 282 West Virginians have died in floods;

(3) Between January 1996 and January 2017, there were 27 federal disaster declarations in West Virginia involving flooding;

(4) Between January 2010 and December 2021, West Virginia was impacted by more than 1,600 separate flood events;

(5) In June 2016, much of West Virginia suffered devastating flooding; and

(6) Despite the many state and federal flood protection programs and projects, flooding continues to be West Virginia’s most common and widespread natural disaster.

(c) It is the purpose of this article to:

(1) Provide a comprehensive and coordinated statewide resiliency and flood protection planning program to save lives, and develop community and economic resiliency plans including, but not limited to, reducing or mitigating flood damage while supporting economic growth and protecting the environment; and

(2) Provide for funding mechanisms to implement such state and community plans developed through the program.

WV Legislature

§29-31-2. State resiliency office, officer, deputy, and board.

(a) It is determined that a state authority is required to provide a coordinated effort and planning for disaster recovery and resiliency between government agencies, first responders, and all other entities to reduce the loss of life and property, lessen the impact of future disasters, protect property and the environment, meet basic human needs, and provide economic growth and resilience prior to and in the aftermath of an incident. Therefore, the State Resiliency Office is created. The office shall be organized within the Office of the Governor. The office will serve as the recipient of disaster recovery and resiliency funds, excluding federal Stafford Act funds, and the coordinating agency of recovery and resiliency efforts, including matching funds for other disaster recovery programs, excluding those funds and efforts under the direct control of the State Resiliency Officer pursuant to §29-31-3, §29-31-6, §29-31-7 and §29-31-8 of this code.

(b)(1) The State Resiliency Office Board is also established and shall consist of the following members: The State Resiliency Officer; the Secretary of the Department of Commerce or his or her designee; the Director of the Division of Natural Resources or his or her designee; the Secretary of the Department of Environmental Protection or his or her designee; the Executive Director of the State Conservation Agency or his or her designee; the President of the West Virginia Emergency Management Council or his or her designee; the Secretary of the Department of Health or his or her designee; the Secretary of the Department of Homeland Security or his or her designee; the Secretary of Transportation or his or her designee; the Adjutant General of the West Virginia National Guard or his or her designee; the Director of the Division of Emergency Management within the Department of Homeland Security or his or her designee; two nonvoting members of the West Virginia Senate, one from each party, to be appointed by the President of the Senate; and two nonvoting members of the West Virginia House of Delegates, one from each party, to be appointed by the Speaker of the House of Delegates.

(2) A member of the board holds office so long as he or she retains the office or position by virtue of which he or she is serving on the board. A majority of the voting members of the board is a quorum and the concurrence of a board in any matter within their duties is required for its determination. The members of the board may not receive compensation for their services on the committee, but are entitled to reimbursement of expenses, including traveling expenses necessarily incurred in the discharge of their duties on the board.

(3) The board shall:

(A) Provide for the keeping of a full and accurate record of all proceedings and of all resolutions, rules, and orders issued or adopted, and of its other official actions;

(B) Shall adopt a seal, which shall be judicially noticed;

(C) Provide for an annual audit of the accounts of receipts and disbursements of the State Resiliency Office; and

WV Legislature

(D) Perform those acts necessary for the execution of its functions under this article.

(1) The State Resiliency Officer shall be the chair of the State Resiliency Office Board and shall be appointed by the Governor with the advice and consent of the Senate. The State Resiliency Officer may cast a vote only in the event of a tie vote. The board shall elect from its voting membership a vice chair. The vice chair shall preside over the meetings of the board in the absence of the chair. In the absence of both the chair and the vice chair any member designated by the members present may act as chair.

(2) The State Resiliency Officer shall be vested with the authority and duties prescribed to the office within this article.

(3) The State Resiliency Officer shall be a person who has:

(A) At least five years' managerial or strategic planning experience in matters relating to flood control, hazard mitigation, and disaster resiliency, or alternatively, in disaster recovery, emergency management, community and economic development, regional planning, economics, or related public policy field;

(B) At least a level IS-800 NIMS certification: *Provided*, That if the State Resiliency Officer does not have a level IS-800 NIMS certification when appointed, he or she shall become so certified within one year following appointment; and

(C) Be thoroughly knowledgeable in matters relating to flood control, hazard mitigation, and disaster resiliency, or alternatively, in matters relating to disaster recovery, emergency management, community and economic development, regional planning, economics, or related public policy field.

(4) The State Resiliency Officer shall employ a deputy who shall assist the State Resiliency Officer in carrying out the duties of the office. The State Resiliency Office Board shall meet and submit a list of no more than five nor less than two of the most qualified persons to the Governor within 90 days of the occurrence of a vacancy in this deputy position. This deputy shall be appointed by the Governor with the advice and consent of the Senate. Applicants for the deputy position shall at a minimum:

(A) Have at least three years' managerial or strategic planning experience in matters relating to flood control, hazard mitigation, and disaster resiliency, or alternatively, in disaster recovery, emergency management, community and economic development, regional planning, economics, or related public policy field;

(B) Have at least a level IS-800 NIMS certification: *Provided*, That if the deputy State Resiliency Officer does not have a level IS-800 NIMS certification when appointed, he or she shall become so certified within one year following appointment; and

(C) Be thoroughly knowledgeable in matters relating to flood control, hazard mitigation, and disaster resiliency, or alternatively, in matters relating to disaster recovery, emergency

WV Legislature

management, community and economic development, regional planning, economics, or related public policy field.

(5) The State Resiliency Officer shall employ additional staff as necessary to assist the State Resiliency Officer in carrying out the duties of the office.

(d) The board shall meet no less than once each calendar quarter at the time and place designated by the chair and the board shall work together with the State Resiliency Officer to fulfill the mission given to the State Resiliency Office to coordinate efforts for disaster planning, recovery, and resiliency between government agencies, first responders and others.

The board will assist and advise the State Resiliency Officer in developing policies to accomplish, at a minimum, the following specific tasks in order to achieve these goals, and will assist the State Resiliency Officer in devising plans and developing procedures which will ensure that agencies and political subdivisions of the state carry out these following specific tasks:

(1) Establish mechanisms to coordinate disaster recovery and resiliency-related programs and activities among state agencies and to encourage intergovernmental as well as cross-sector coordination and collaboration;

(2) Evaluate the state's role in construction permitting process and identify opportunities to expedite the permitting process post-disaster and for selected types of mitigation and adaptation actions;

(3) Conduct a review of laws and regulations to identify those that create or add to risk, or interfere with the ability to reduce risk or to improve disaster recovery and resiliency;

(4) Conduct an inventory of relevant critical planned activity by state agencies to determine their proposed impact upon disaster recovery and resiliency;

(5) Make recommendations regarding practical steps that can be taken to improve efficiencies, and to pool and leverage resources to improve disaster recovery and resiliency;

(6) Identify, prioritize, and evaluate issues affecting implementation of mitigation and adaptation actions, including, but not limited to, the effect of increasing flood risk in context of zoning and other land use regulations, possible conflicts between public hazard mitigation/adaptation planning and private property interests (e.g. buy-out programs, projects to increase flood storage), develop guidance for cities and towns, real estate professionals, property owners under existing law and regulations; and develop proposals for changes in laws, policies, and regulations, as needed;

(7) Ensure all counties and municipalities are covered by up-to-date Hazard Mitigation Plans and Local Comprehensive Disaster Plans that are consistent with, and coordinated to, the state's Hazard Mitigation Plans Comprehensive Disaster Plans, and the state's Flood

WV Legislature

Resiliency Plan; including, but not limited to, assisting them in developing planning guidance for cities and towns to complete and/or update Hazard Mitigation Plans; providing technical assistance to help counties and municipalities meet these standards; and provide notice to counties and municipalities of funding opportunities to implement projects outlined in their Hazard Mitigation Plans;

(8) Conduct risk assessments, including, but not limited to, examining state highway corridors and associated drainage systems for stormwater inundation, impacts of downed trees, effects on utilities, and comparable facilities; assessment of known stormwater impacts between state highways and municipal drainage systems, options to eliminate or mitigate such impact; a housing vulnerability assessment for structures in riparian zones; a vulnerability assessment of critical infrastructure at the state and municipal levels including hospitals, schools, fire stations, and comparable facilities, and a vulnerability assessment of the state's historic and cultural resources;

(9) Establish working groups that will conduct assessments for varied sectors of the economy, such as small business, ports and river traffic, agriculture, manufacturing, and tourism; these assessments should address vulnerabilities and economic impacts, options to mitigate impacts, options to improve preparedness, response and recovery, and economic opportunities associated with design, engineering, technological and other skills and capabilities that can improve resilience;

(10) Establish emergency permitting procedures to expedite issuance of state permits following disasters, and develop guidance (model procedures) for political subdivisions to follow; and

(11) Lead long-term recovery planning efforts on behalf of the state in the event of the proclamation of the existence of a state of emergency due to a natural hazards event, or upon a Presidential declaration of a major disaster under Section 406 of the Stafford Act.

All decisions of the board shall be decided by a majority vote of the members.

(e) The State Resiliency Office shall provide adequate staff from that office to ensure the meetings of the board are facilitated, board meeting minutes are taken, records and correspondence kept, and that reports of the board are produced in a timely manner.

(f) Notwithstanding any other provisions of this code:

(1) The meetings of the board are not subject to the provisions of §6-9A-1 *et seq*. of this code.

(2) The following are exempt from public disclosure under the provisions of §29B-1-1 *et seq*. of this code:

(A) All deliberations of the board;

(B) The materials, in any medium, including hard copy and electronic, placed in the custody

WV Legislature

of the board as a result of any of its duties; and

(C) All records of the board, in the possession of the board, and generated by the board, due to their falling under several exceptions to public disclosure including, but not limited to, that for security or disaster recovery plans and risk assessments.

WV Legislature

§29-31-2a. Definitions.

As used in this article:

"Board" means the West Virginia State Resiliency Office Board created by 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;

"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 recovery activities" means activities undertaken following a disaster to provide, or to participate in, the provision of long-term rehabilitation of infrastructure, housing, community facilities, and economic activity impacted by a disaster event;

"Flood Fund" means the West Virginia Flood Resiliency Trust Fund created by this article;

"Flood prevention or protection study" means the conduct of a hydraulic or hydrologic study of a flood plain with historic and predicted future floods, the assessment of current and projected future flood risk, and the development of strategies to prevent or mitigate damage from flash or riverine flooding;

"Flood resiliency" means efforts and activities intended to minimize damages during times of flooding resulting in reduced risk to people and infrastructure, and ensuring there is ample room for flooding and river adjustment to occur where the opportunity may exist;

"Low-income geographic area" means any locality, or community within a locality, that has a median household income that is not greater than 80 percent of the local median household income, or any area in the state designated as a qualified opportunity zone by the U.S. Secretary of the Treasury via his delegation of authority to the Internal Revenue Service;

"Low-income household" means any household whose income does not exceed 80 percent of the local median household income;

"Nature-based solution" means sustainable planning, design, environmental management, and engineering practices that weave natural features or processes into the built environment to promote flood resiliency and preserve or enhance natural hydrologic function;

WV Legislature

"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;

"Recovery Trust Fund" means the West Virginia Disaster Recovery Trust Fund created by this article; and,

"Stafford Act" means the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. Chapter 68).

WV Legislature

§29-31-3. Authority of State Resiliency Office and State Resiliency Officer.

The State Resiliency Office will coordinate the state's disaster recovery and resiliency missions and the State Resiliency Officer serves as the primary representative of the Governor in these matters. The State Resiliency Officer shall, upon the order and direction of the Governor, act on behalf of the Governor in the event of the proclamation of the existence of a state of emergency or state of preparedness due to a natural hazards event or upon a Presidential declaration of a major disaster under Section 406 of the Stafford Act. The State Resiliency Officer will assist and advise the Governor on all disaster recovery and resiliency issues and serve as a liaison between the Governor's office, and all other parties, whether state, federal, public, or private to further the purposes of this article. The State Resiliency Officer will:

(1) Serve as coordinator of all economic and community resiliency planning and implementation efforts, including, but not limited to, flood protection programs and activities in the state;

(2) Develop a new state Flood Resiliency Plan due to the Board no later than June 30, 2024;

(3) Coordinate an annual review of the state Flood Resiliency Plan and update the plan no less than biennially, with updates due to the board no later than June 30 in even-numbered years;

(4) Recommend legislation to reduce or mitigate flood damage;

(5) Report to the Joint Legislative Committee on Flooding at least quarterly;

(6) Catalog, maintain, and monitor a listing of current and proposed capital expenditures to reduce or mitigate flood damage and other hazards, and other useful and desirable resiliency efforts;

(7) Coordinate planning of flood projects with federal agencies;

(8) Improve professional management of flood plains;

(9) Provide education and outreach on flooding issues to the citizens of this state;

(10) Establish a single website integrating all agency flood information;

(11) Monitor federal funds and initiatives that become available for disaster recovery and economic and community resiliency or other flood or hazard mitigation, and to direct expenditures on behalf of the Governor;

(12) Pursue additional funds and resources to assist not only with long-term recovery efforts but also long-term community and statewide resiliency efforts;

WV Legislature

(13) Coordinate, integrate, and expand planning efforts in the state for hazard mitigation, long-term disaster recovery, and economic diversification;

(14) Coordinate long-term disaster recovery efforts in response to disasters as they occur;

(15) Establish and facilitate regular communication between federal, state, local, and private sector agencies, and organizations to further economic and disaster resilience;

(16) Receive resources, monetary or otherwise, from any other governmental entity and disburse those resources to effectuate the purposes of this article;

(17) Execute cooperative agreements, where appropriate, between the State Resiliency Office and the federal and/or state governments;

(18) Contract, where appropriate, on behalf of the State Resiliency Office, 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;

(19) Use funds administered by the State Resiliency Office for the maintenance, construction, or reconstruction of capital repair and replacement items as necessary to effectuate the purposes of this article;

(20) Accept and use funds from the federal government, its instrumentalities and agencies, any state, territory or the District of Columbia, and its agencies and instrumentalities, municipalities, foreign governments, public bodies, private corporations, partnerships, associations, and individuals for the purposes of disaster recovery, hazard mitigation, flood mitigation, flood prevention, and disaster response programs;

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

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

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

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

(25) Have the ability to draw upon other departments, divisions, agencies, and all other subdivisions of the state for research and input in fulfilling the requirements of this article, and its requests are to have priority over other such requests;

WV Legislature

(26) Participate in the interdepartmental transfer of permanent state employees, as if he or she were a department secretary, under the provisions of §5F-2-7 of this code.

(27) Notwithstanding any other provision of this code to the contrary, acquire legal services that are necessary, including representation of the board, its employees, and officers before any court or administrative body from the office of the Attorney General, who shall provide such legal assistance and representation, and

(28) Take all other actions necessary and proper to effectuate the purposes of this article.

The office shall have any other additional authority, duties, and responsibilities as prescribed by the Governor to effectuate the purposes of this article. Due to the at-will employment relationship with the office, its employees may not avail themselves of the state grievance procedure as set forth in §6C-2-1 *et seq*. of this code.

WV Legislature

§29-31-4. Reporting to the Joint Legislative Committee on Flooding.

The State Resiliency Officer shall report, at a minimum of quarterly, to the Joint Legislative Committee on Flooding, created pursuant to §4-15-1 *et seq.* of this code, in sufficient detail for the committee to be aware of the activities of the office to assure progress toward reducing and mitigating flood damage within this state while respecting and complying with the Takings Clause of the United States Constitution, the West Virginia Constitution, and related precedential court opinions, and to develop legislative recommendations and shall submit an annual report to the committee by December 31 of each year, along with any recommended legislation, budget requests and a summary of the activities of the office for the previous year.

WV Legislature

§29-31-5. Employees.

(a) The State Resiliency Officer shall have the power to hire, administer, and manage employees necessary to fulfill its responsibilities.

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

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

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

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

(5) All employees and officers of the State Resiliency Office who are entrusted with funds or property shall execute surety bonds.

(b) The State Resiliency Officer will set appropriate salary rates for employees equivalent to a competitive wage rate necessary to support a specific mission.

WV Legislature

§29-31-6. West Virginia Disaster Recovery Trust Fund.

(a) There is hereby created a special trust fund which shall be designated and known as the West Virginia Disaster Recovery Trust Fund to be administered by the State Resiliency Officer. The recovery fund shall consist of: (1) Any appropriations, grants, gifts, contributions, or revenues received by the recovery fund from any source, public or private; and (2) all income earned on moneys, properties, and assets held in the Recovery Fund. When any funds are received by the State Resiliency Officer from any source for the purpose of disaster recovery, they shall be paid into the Recovery Fund, and shall be disbursed and otherwise managed in the manner set forth in this article unless such a transfer is not allowable by law. The Recovery Fund shall be treated by the Auditor and Treasurer as a special revenue fund and not as part of the general revenues of the state.

(b) All moneys, properties, and assets acquired by the State of West Virginia in the Disaster Recovery Trust Fund shall be held by it in trust for the purposes of carrying out its powers and duties and shall be used and reused in accordance with the purposes and provisions of this article. Such moneys, properties, and assets shall at no time be commingled with other public funds except as authorized for investment under §29-31-8 of this code. Disbursements from the Recovery Fund shall be made only upon the written requisition of the State Resiliency Officer as set forth in §29-31-7 and §29-31-8 of this code. If no need exists for immediate use or disbursement, moneys, properties, and assets in the Recovery Fund shall be invested or reinvested by the State Resiliency Officer as provided in this article.

WV Legislature

§29-31-7. West Virginia Disaster Recovery Trust Fund disbursement.

Upon the proclamation of the existence of a state of emergency due to a natural hazards event under the provisions of §15-5-6 of this code or upon a Presidential declaration of a major disaster under Section 406 of the Stafford Act, the State Resiliency Officer shall have the power to disburse funds from the Disaster Recovery Trust Fund created pursuant to §29-31-6 of this code to any person, political subdivision, or local organization for emergency services in such amounts and in such manner, and to take such other actions, as the State Resiliency Officer may determine is necessary or appropriate in order to provide assistance to any person, political subdivision, or local organization for recovering from the disaster, or otherwise involved in disaster recovery activities: *Provided*, That except as provided hereafter in this section, requisitions for payment shall not be made or authorized for payment by the Auditor without the express approval of the State Resiliency Officer: *Provided, however*, That all disbursements arising out of the events surrounding the aftermath of a disaster event giving rise to the relevant disbursements shall require the express approval of the State Resiliency Officer, which approval shall not be unduly withheld or delayed.

In the occurrence of a qualifying event granting the State Resiliency Officer the power to disburse funds from the Disaster Recovery Trust Fund, the following provisions and conditions shall be adhered to:

(1) Disbursements shall be prioritized to the benefit of low-income households and geographic areas, and not less than 50 percent of all funds disbursed through the Disaster Recovery Trust Fund following any particular disaster event shall be disbursed to the benefit of low-income geographic areas, low-income households, or to local organizations conducting disaster recovery activities to the benefit of low-income geographic areas or low-income households;

(2) Disbursements to the benefit of a political subdivision may only be allowed upon the verification to the State Resiliency Officer that the recipient political subdivision has adopted, or will adopt within 24 months, the following programs or measures or risk forfeiture of future funding opportunities:

(A) Town road and bridge standards consistent with or exceeding those listed under the most current version of standards published by the West Virginia Department of Transportation;

(B) A flood hazard bylaw, or an adopted interim flood hazard bylaw as an intermediary step to secure enrollment and participation in the National Flood Insurance Program (NFIP), if applicable;

(C) A local Hazard Mitigation Plan that meets the provisions of 44 CFR § 201.6 that has been approved by the local community and is approved or in the process of securing final approval by FEMA. The local mitigation plan may be part of a larger multijurisdictional or regional

WV Legislature

mitigation plan;

(D) Adoption of a local Emergency Operations Plan (EOP) in accordance with State standards; and

(E) Attainment of an active rate classification (class #1 through #9) under FEMA's Community Rating System (CRS) that includes activities that prohibit new structures in mapped flood hazard zones; and

(3) Disbursements may be further prioritized or conditioned at the discretion of the State Resiliency Officer and upon approval of the State Resiliency Office Board.

WV Legislature

§29-31-8. Powers and duties related to the West Virginia Disaster Recovery Trust Fund.

The State Resiliency Officer is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate the purposes set forth in §29-31-7 of this code. The State Resiliency Officer has the power:

(1) To accept appropriations, gifts, grants, bequests, and devises from any source, public or private, for deposit into the Recovery Fund, and to use or dispose of the same to provide assistance to any person, political subdivision, or local organization for recovering from a disaster, or otherwise involved in disaster recovery activities;

(2) To make and execute contracts, leases, releases, and other instruments necessary or convenient for the exercise of its power;

(3) To make, and from time to time, amend, and repeal bylaws for the governance of its activities not inconsistent with the provisions of this article;

(4) To sue and be sued;

(5) To acquire, hold, and dispose of real and personal property;

(6) To enter into agreements or other transactions with any federal or state agency, political subdivision, or person;

(7) To provide for the deposit of any funds or assets of the West Virginia Disaster Recovery Trust Fund with the state Treasurer for investment pursuant to §12-6C-6 of this code;

(8) To procure insurance against any loss in connection with its property in such amounts, and from such insurers, as may be necessary or desirable;

(9) To provide financial assistance to state and local governmental entities for the nonfederal share for federal disaster assistance programs;

(10) To provide for financial assistance to homeowners and communities that are not eligible for Community Development Block Grant-Disaster Recovery and other federal funding assistance;

(11) To provide loans and grants to local governments in disaster areas that need immediate cash flow assistance;

(12) To provide grants to governmental entities and organizations exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code to repair or replace infrastructure or equipment damaged as a result of a natural disaster;

(13) To provide financial assistance for verifiable losses of agricultural commodities due to a

WV Legislature

natural disaster; and

(14) Do all acts necessary and proper to carry out the powers granted to the State Resiliency Office within its disaster recovery mission.

WV Legislature

§29-31-9. Capitalization of the West Virginia Disaster Recovery Trust Fund.

(a) The West Virginia Disaster Recovery Trust Fund may be granted an initial one-time allocation of $10 million in state general funds for the purposes outlined in this article.

(b) The State Resiliency Officer shall, with the concurrence of the State Auditor, present an expenditure report to the State Resiliency Office Board by no later than December 1 annually.

(c) Upon review and verification by the State Resiliency Office Board that all expenditures within the West Virginia Disaster Recovery Trust Fund expenditure report are valid and justified uses of Recovery Fund resources, the State Resiliency Office Board shall submit to the Governor by no later than December 31 annually a budget and may request to replenish the Recovery Fund up to its initial $10 million capitalization.

WV Legislature

§29-31-10. West Virginia Flood Resiliency Trust Fund.

(a) There is hereby created a special trust fund which shall be designated and known as the West Virginia Flood Resiliency Trust Fund to be administered by the State Resiliency Officer. The Flood Fund shall consist of: (1) Any appropriations, grants, gifts, contributions, or revenues received by the Flood Fund from any source, public or private; and (2) all income earned on moneys, properties, and assets held in the Flood Fund. When any funds are received by the State Resiliency Officer from any source for flood resiliency activities, they shall be paid into the Flood Fund, and shall be disbursed and otherwise managed in the manner set forth in this article. The Flood Fund shall be treated by the Auditor and Treasurer as a special revenue fund and not as part of the general revenues of the state.

(b) All moneys, properties, and assets acquired by the State of West Virginia in the Flood Fund shall be held by it in trust for the purposes of carrying out its powers and duties and shall be used and reused in accordance with the purposes and provisions of this article. Such moneys, properties, and assets shall at no time be commingled with other public funds except as authorized for investment under §29-31-12 of this code. Disbursements from the Flood Fund shall be made only upon the written requisition of the State Resiliency Officer as set forth in §29-31-11 and §29-31-12 of this code. If no need exists for immediate use or disbursement, moneys, properties, and assets in the Flood Fund shall be invested or reinvested by the State Resiliency Officer as provided in this article.

WV Legislature

§29-31-11. West Virginia Flood Resiliency Trust Fund disbursement.

Upon the development of a new state Flood Resiliency Plan, the State Resiliency Officer shall have the power to disburse funds from the Flood Fund for the purposes of implementing the Flood Resiliency Plan to any person, political subdivision, or local organization in such amounts and in such manner, and to take such other actions, as the State Resiliency Officer may determine is necessary or appropriate and is outlined within the Flood Resiliency Plan. All assistance to any person, political subdivision, or local organization shall be for the purposes of building flood resiliency in the face of current and projected future flood disaster events: *Provided*, That except as provided hereafter in this section, requisitions for payment shall not be made or authorized for payment by the Auditor without the express approval of the State Resiliency Officer: *Provided, however*, That all disbursements shall require the express approval of the State Resiliency Officer, which approval shall be contingent on the proposed activity appearing as a valid proposed flood resiliency activity and prioritized for implementation within the most recent Flood Resiliency Plan as reviewed and approved by the State Resiliency Office Board.

Following the development and approval of a new state Flood Resiliency Plan, the State Resiliency Officer is granted the power to disburse funds from the Flood Resiliency Trust Fund. In accordance with these powers, the following provisions and conditions shall be adhered to:

(1) Disbursements from the Flood Fund shall be used solely for the purposes of enhancing flood prevention or protection as required by this article. The State Resiliency Office shall manage the Flood Fund and may disburse from the Flood Fund its reasonable costs and expenses incurred in the management of the Flood Fund;

(2) Disbursements shall be prioritized to the benefit of low-income geographic areas, and not less than 50 percent of all funds disbursed through the Flood Resiliency Trust Fund shall be disbursed to the benefit of low-income geographic areas and low-income households;

(3) Disbursements shall be prioritized toward the implementation of nature-based solutions, and not less than 50 percent of all funds disbursed through the Flood Resiliency Trust Fund shall be disbursed to implement nature-based solutions. Of disbursements made to implement nature-based solutions, not less than 25 percent of these disbursements shall be utilized for the acquisition of single-family primary residences and multifamily residences in areas currently or projected to be subjected to significant flood impacts, assistance to residents relocating outside of the floodplain, and floodplain restoration activities on properties acquired through the Flood Fund;

(4) Disbursements to the benefit of a political subdivision may only be allowed upon the verification to the State Resiliency Officer that the recipient political subdivision has adopted, or will adopt within 24 months, the following programs or measures:

(A) Town road and bridge standards consistent with or exceeding those listed under the

WV Legislature

most current version of standards published by the West Virginia Department of Transportation;

(B) A flood hazard bylaw, or an adopted interim flood hazard bylaw as an intermediary step to secure enrollment and participation in the National Flood Insurance Program (NFIP), if applicable;

(C) A local Hazard Mitigation Plan that meets the provisions of 44 CFR § 201.6 that has been approved by the local community, and is approved or in the process of securing final approval by FEMA. The local mitigation plan may be part of a larger multijurisdictional or regional mitigation plan;

(D) Adoption of a local Emergency Operations Plan (EOP) in accordance with state standards; and,

(E) Attainment of an active rate classification (class #1 through #9) under FEMA's Community Rating System (CRS) that includes activities that prohibit new structures in mapped flood hazard zones; and

(5) Prioritization and conditions for disbursements at the discretion of the State Resiliency Officer and upon approval of the State Resiliency Office Board.

WV Legislature

§29-31-12. Powers and duties related to the West Virginia Flood Resiliency Trust Fund.

The State Resiliency Officer is hereby granted, has, and may exercise all powers necessary or appropriate to carry out and effectuate the purposes set forth in §29-31-11 of this code. The State Resiliency Officer has the power:

(1) To accept appropriations, gifts, grants, bequests, and devises from any source, public or private, for deposit into the Flood Fund, and to use or dispose of the same to provide assistance to any person, political subdivision, or local organization for flood resiliency, flood prevention, and flood protection activities;

(2) To make and execute contracts, leases, releases, and other instruments necessary or convenient for the exercise of its power;

(3) To make, and from time to time, amend, and repeal bylaws for the governance of its activities not inconsistent with the provisions of this article;

(4) To sue and be sued;

(5) To acquire, hold, and dispose of real and personal property;

(6) To enter into agreements or other transactions with any federal or state agency, political subdivision, or person;

(7) To provide for the deposit of any funds or assets of the West Virginia Flood Resiliency Trust Fund with the state Treasurer for investment pursuant to §12-6C-6 of this code;

(8) To procure insurance against any loss in connection with its property in such amounts, and from such insurers, as may be necessary or desirable;

(9) To procure services related to the development and updating of the state Flood Resiliency Plan;

(10) To provide loans or grants to political subdivisions and individual beneficiaries for the purpose of implementing activities proposed and outlined within the Flood Resiliency Plan;

(11) To provide loans or grants to governmental entities and organizations exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code for the purpose of implementing activities proposed and outlined within the Flood Resiliency Plan;

(12) To provide loans or grants to political subdivisions for the purpose of conducting flood prevention and protection studies in areas that are subject to recurrent flooding as confirmed by a locality-certified floodplain manager; and

(13) Do all acts necessary and proper to carry out the powers granted to the State Resiliency

WV Legislature

Office for flood resiliency activities.

WV Legislature

§29-31-13. Capitalization of the West Virginia Flood Resiliency Trust Fund.

(a) The West Virginia Flood Resiliency Trust Fund may be granted an initial one-time allocation of $40 million in state general funds for the purposes outlined in this article.

(b) The State Resiliency Officer shall, with the concurrence of the State Auditor, present an expenditure report to the State Resiliency Office Board by no later than December 1 annually.

(c) Upon review and verification by the State Resiliency Office Board that all expenditures within the West Virginia Flood Resiliency Trust Fund expenditure report are valid and justified uses of Flood Fund resources, the State Resiliency Office Board shall submit to the Governor by no later than December 31 annually a budget and may request to replenish the Flood Fund up to its initial $40 million capitalization.

(d) Upon state receipt of Community Development Block Grant-Disaster Recovery funds in relation to a flood disaster event, and in order to provide the state with the flexibility required to provide assistance to any person, political subdivision, or local organization recovering from the flood disaster event, a minimum of six percent of those funds shall be dedicated for the purposes of Flood Resiliency Plan development and implementation activities to the extent that those purposes are in compliance with applicable federal laws and regulations governing such funds and compatible with the state’s long-term recovery goals.

WV Legislature

§29-31-14. Tax exemption.

The State Resiliency Officer shall not be required to pay any taxes and assessments to the state or any political subdivision of the state upon any of its moneys, properties, or assets or upon its obligations or other evidences of indebtedness pursuant to the provisions of this article, or upon any moneys, funds, revenues, or other income held or received into the West Virginia Disaster Recovery Trust Fund or the West Virginia Flood Resiliency Trust Fund.

WV Legislature