WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1951

ENROLLED

HOUSE BILL No. 305

(By Mr. Speaker, Mr. Fleming)

PASSED March 9, 1951

In Effect 90 days from Passage
AN ACT to repeal chapter sixty-one, acts of the Legislature, regular session, one thousand nine hundred forty-one, as amended by chapter one hundred forty-eight, acts of the Legislature, regular session, one thousand nine hundred forty-five, and to amend chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, to be designated article five, relating to the establishment of a civil defense agency and other organizations for civil defense within this state and granting certain executive powers with respect thereto.

Be it enacted by the Legislature of West Virginia:

That chapter sixty-one, acts of the Legislature, regular session, one thousand nine hundred forty-one, as amended by chapter one hundred forty-eight, acts of the Legislature, regular session, one thousand nine hundred forty-five, be repealed,
and that chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended, by adding thereto a new article, to be designated article five, to read as follows:

**Article 5. Civil Defense**

Section 1. *Policy and Purpose.*—In view of the existing and increasing possibility of the occurrence of disasters of unprecedented size and destructiveness resulting from enemy attack, sabotage or other hostile action, or from fire, flood, earthquakes, or other natural causes, and in order to insure that preparations of this state will be adequate to deal with such disasters, 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 hereby found and declared to be necessary: (1) to create a state civil defense agency, and to authorize the creation of local organizations for civil defense 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 here-
in; and (3) to provide for the rendering of mutual aid among the political subdivisions of the state and with other states with respect to the carrying out of civil defense functions.

It is further declared to be the purpose of this act and the policy of the state that all civil defense functions of this state be coordinated to the maximum extent 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, to the end that the most effective preparation and use may be made of the nation's manpower, resources, and facilities for dealing with any disaster that may occur.

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

(a) "Civil defense" shall mean the preparation for and the carrying out of all emergency functions, other than functions for which military forces are primarily responsible, to minimize and repair injury and damage resulting from disasters caused by enemy attack, sabotage or other hostile action, or by fire, flood, earthquake, or other natural causes. These functions include, without limi-
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9 tion, fire fighting services, police services, medical and
10 health services, rescue, engineering, air raid warning serv-
11 ices, communications, radiological, chemical and other
12 special weapons defense, evacuation of persons from strick-
13 en areas, emergency welfare services, emergency trans-
14 portation, existing or property assigned functions of plant
15 protection, temporary restoration of public utility serv-
16 ices, and other functions related to civilian protection, to-
17 gether with all other activities necessary or incidental to
18 the preparation for and carrying out of the foregoing func-
19 tions.

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

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

Sec. 3. State Civil Defense Agency.—There is hereby created within the executive branch of the state government a department of civil defense, hereinafter called the civil defense agency, and a director of civil defense, hereinafter called the director, who shall be the head thereof. The director shall be appointed by the governor, with the advice and consent of the Senate, to serve during the pleasure of the governor.

The director may employ such technical, clerical, stenographic and other personnel and fix their compensation, and may make such expenditures within the appropriation therefor, or from other funds made available to him for the purpose of civil defense, as may be necessary to carry out the purposes of this act.

The director and other personnel of the civil defense agency 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.
The director, subject to the direction and control of the governor, shall be the executive head of the civil defense agency and shall be responsible to the governor for carrying out the program for civil defense of this state. He shall coordinate the activities of all organizations for civil defense within the state, and shall maintain liaison with and cooperate with civil defense agencies and organizations of other states and of the federal government, and shall have such additional authority, duties, and responsibilities authorized by this act as may be prescribed by the governor.

Sec. 4. Civil Defense Advisory Council.—There is hereby created a civil defense advisory council, hereinafter called the council, which shall consist of seven members to be appointed by the governor. The council shall advise the governor and the director on all matters pertaining to civil defense. The governor shall serve as chairman of the council, and the members thereof shall serve without compensation, but shall be reimbursed for the reasonable and necessary expenses incurred in the performance of their duties.
Sec. 5. Civil Defense Powers of the Governor.—The governor shall have general direction and control of the civil defense agency, and shall be responsible for the carrying out of the provisions of this act, and in the event of disaster beyond local control, may assume direct operational control over all or any part of the civil defense functions within this state.

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

In performing his duties under this act, 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 act within the limits of the authority conferred upon him herein, with due consideration of the plans of the federal government.

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

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

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

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

(6) To delegate any administrative authority vested in him under this act, and to provide for the subdelegation of any such authority.

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

Sec. 6. Mobile Reserve Battalions.—The governor or his duly designated representative is authorized to create and establish such number of mobile reserve battalions as may be necessary to reinforce civil defense 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 battalion who shall have primary responsibility for the organization, administration and operation of such battalion. Mobile reserve battalions shall be called to duty upon orders of the governor and shall perform their functions in any part of the state, or, upon the conditions specified in this section, in other states.

Personnel of mobile reserve battalions 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 re-
ceive 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 the 
national guard and to the same rights and immunities 
as are provided by law for the employees of this state. 
All personnel of mobile reserve battalions shall, while 
on duty, be subject to the operational control of the au-
thority in charge of civil defense activities in the area in 
which they are serving, and shall be reimbursed for all 
actual and necessary travel and subsistence expenses. 
The state shall reimburse a political subdivision for the 
compensation paid and actual and necessary travel, sub-
sistence and maintenance expenses of employees of such
political subdivision while serving as members of a mobile
reserve battalion, and for all payments for death, dis-
ability or injury of such employees incurred in the course
of such duty, and for all losses of or damage to supplies
and equipment of such political subdivision resulting from
the operation of such mobile reserve battalion.

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

No personnel of mobile reserve battalions of this state
shall be ordered by the governor to operate in any other state unless the laws of such other state contain provisions substantially similar to this section.

Sec. 7. Local Organization for Civil Defense.—Each political subdivision of this state is hereby authorized and directed to establish a local organization for civil defense in accordance with the state civil defense plan and program. Each local organization for civil defense shall have a director who shall be appointed by the local civil defense council, and who shall have direct responsibility for the organization, administration and operation of such local organization for civil defense, subject to the direction and control of such local civil defense council. Each local organization for civil defense shall perform civil defense functions within the territorial limits of the political subdivision within which it is organized, and, in addition, shall conduct such functions outside of such territorial limits as may be required pursuant to the provisions of section eight of this act.

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

Sec. 8. Mutual Aid Arrangements.—The director of
each local organization for civil defense may, in collabor-
at ing with other public and private agencies within this
state, develop or cause to be developed mutual aid ar-
rangements for reciprocal civil defense aid and assistance
6 in case of disaster too great to be dealt with unassisted.
7 Such arrangements shall be consistent with the state civil
defense plan and program, and in time of emergency it
8 shall be the duty of each local organization for civil de-
defense to render assistance in accordance with the pro-
9 visions of such mutual aid arrangements.
10 The director of each local organization for civil defense
11 may, subject to the approval of the governor, enter into
12 mutual aid arrangements with civil defense agencies or
13 organizations in other states for reciprocal civil defense
14 aid and assistance in case of disaster too great to be dealt
15 with unassisted.

Sec. 9. Immunity.—Neither the state nor any political
2 subdivision thereof, nor other agencies, nor, except in
3 cases of willful misconduct, the agents, employees, or
4 representatives of any of them, engaged in any civil de-
5 fense activities, while complying with or attempting to
6 comply with this act or any rule or regulation promul-
7 gated pursuant to the provisions of this act, shall be liable
8 for the death of or any injury to persons, or damage to
9 property, as a result of such activity. The provisions of
this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under this act, or under the workmen's compensation law, or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of congress.

Sec. 10. Appropriations and Authority to Accept Services, Gifts, Grants, and Loans.—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 civil defense.

Whenever the federal government or any agency or officer thereof shall offer to 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 of civil defense, the state, acting through the governor, or such political subdivision, acting with the consent of the governor and through its executive officer or governing body, may accept such offer and upon such
acceptance the governor of the state or executive officer
or governing body of such political subdivision may au-
thorize any officer of the state or of the political sub-
division, as the case may be, to receive such services,
equipment, supplies, materials, or funds on behalf of the
state or such political subdivision, and subject to the
terms of the offer and the rules and regulations, if any,
of the agency making the offer.

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 of civil defense, the state,
acting through the governor, or such political subdivision,
acting through its executive officer or governing body,
may accept such offer and upon such acceptance the gov-
ernor of the state or executive officer or governing body
of such political subdivision may authorize any officer of
the state or of the political subdivision, as the case may
be, to receive such services, equipment, supplies, mate-
rals, or funds on behalf of the state or such political sub-
division, and subject to the terms of the offer.
Sec. 11. Utilization of Existing Services and Facilities.—

In carrying out the provisions of this act, the governor 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 thereof 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 the civil defense organizations of the state upon request.

Sec. 12. Political Activity Prohibited.—No organization for civil defense established under the authority of this act shall participate in any form of political activity, nor shall it be employed directly or indirectly for political purposes.

Sec. 13. Civil Defense Personnel.—No person shall be employed or associated in any capacity in any civil defense organization established under this act who advocates or has advocated a change by force or violence in
the constitutional form of the government of the United States or in 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. Each person who is appointed to serve in an organization for civil defense shall, before entering upon his duties, take an oath, in writing, before a person authorized to administer oaths in this state, which oath 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 the state 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 purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

"And 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 govern-
ment of the United States or of this state by force or violence; and that during such time as I am a member of the (name of organization)......, I will not advocate nor become a member of any political party or organization that advocates the overthrow of the government of the United States or of this state by force or violence.”

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

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

Sec. 16. This act shall expire two years from date of
passage, unless the Legislature at its next regular session,

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

Chairman Senate Committee

Chairman House Committee

Originated in the House of Delegates

Takes effect 90 days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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

Governor

MAR 16 1951

D. Pitt O'Brien,
Secretary of State