WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1953

ENROLLED
SENATE BILL NO. 281
(By Mr. Amos)

PASSED March 13, 1953
In Effect from Passage
ENROLLED

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[Passed March 13, 1953; in effect from passage.]

AN ACT to amend and reenact article five, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, 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 article five, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 1. Policy and Purpose.—In view of the existing 2 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 herein; and (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 civil defense functions.

It is further declared to be the purpose of this article 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 in-
cluding 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 article:

(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 respon-
sible, to prevent, 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
limitation, fire fighting services, police services, medical
and health services, rescue, engineering, air raid warning
services, communications, 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 civilian protection, together
with all other activities necessary or incidental to the
preparation for and carrying out of the foregoing func-
tions.
(b) "Local organization for civil defense" shall mean
an organization created in accordance with the provisions
of this article by state or local authority to perform local
civil defense functions.
(c) "Mobile Support Unit" shall mean an organization
for civil defense 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
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 govern-
ment 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 article.

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 article 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 article, and in the event of disaster beyond local control, may assume direct
6 operational control over all or any part of the civil de-
7 fense functions within this state.
8 In performing his duties under this article, the governor
9 is authorized to cooperate with the federal government,
10 with other states, and with private agencies in all matters
11 pertaining to the civil defense of this state and of the
12 nation.
13 In performing his duties under this act to effect its
14 policy and purpose, the governor is further authorized
15 and empowered:
16 (1) To make, amend, and rescind the necessary orders,
17 rules and regulations to carry out the provisions of this
18 article within the limits of the authority conferred upon
19 him herein, with due consideration of the plans of the
20 federal government.
21 (2) To prepare a comprehensive plan and program for
22 the civil defense of this state, such plan and program to
23 be integrated into and coordinated with the civil defense
24 plans of the federal government and of other states to
25 the fullest possible extent, and to coordinate the prepara-
26 tion of plans and programs for civil defense by the politi-
cal 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 insure 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 arrangements 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 article, and to provide for the sub-
delegation of any such authority.

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

(8) 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 or control of (a) black-outs and practice black-outs, air-raids drills, mobilization of 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 meet-
ings or gatherings; and (g) the evacuation and reception of the civilian population.

Sec. 6. Emergency Powers.—The provisions of this section shall be operative only during the existence of a state of civil defense emergency (referred to hereinafter in this section as "emergency"). The existence of such emergency may be proclaimed by the governor or by concurrent resolution of the legislature if the governor in such proclamation, or the legislature in such resolution, finds that an attack upon the United States has occurred or is anticipated in the immediate future, or that a natural disaster of major proportions has actually occurred within this state, and that the safety and welfare of the inhabitants of this state require an invocation of the provisions of this section. Any such emergency, whether proclaimed by the governor or by the legislature, shall terminate upon the proclamation of the termination thereof by the governor, or the passage by the legislature of a concurrent resolution terminating such emergency.

During such period as such state of emergency exists or
continues, the governor shall have and may exercise the following additional emergency powers:

(a) To enforce all laws, rules, and regulations, relating to civil defense and to assume direct operational control of any or all civil defense forces and helpers in the state;

(b) To sell, lend, lease, give, transfer, or deliver materials or perform services for civil defense purposes on such terms and conditions as the governor shall prescribe and without regard to the limitations of any existing law, and to account to the state treasurer for any funds received for such property;

(c) To procure materials and facilities for civil defense by purchase, condemnation under the provisions of chapter fifty-four of the code, or seizure pending institution of condemnation proceedings within thirty days from the seizing thereof, and to construct, lease, transport, store, maintain, renovate, or distribute such materials and facilities. Compensation for the property so procured shall be as is provided in chapter fifty-four of the code;

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

(e) Subject to the provisions of the state constitution, to remove from office any public officer having administrative responsibilities under this act for willful failure to obey an order, rule or regulation adopted pursuant to this act. Such removal shall be upon charges after service upon such person of a copy of such charges and after giving him an opportunity to be heard in his defense.

Pending the preparation and disposition of charges, the governor may suspend such person for a period not exceeding thirty (30) days. A vacancy resulting from removal or suspension pursuant to this section shall be filled by the governor until it is filled as otherwise provided by law;

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

Sec. 7. Mobile Support Units.—The governor or his duly designated representative is authorized to create
and establish such number of mobile support units 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 unit who shall have
primary responsibility for the organization, administra-
tion and operation of such unit. Mobile support units
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 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 serv-
ing 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 politi-
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24 cal subdivision thereof, be entitled to compensation by
25 the state at the same rate as is paid members of circuit
26 court juries and to the same rights and immunities as
27 are provided by law for the employees of this state. All
28 personnel of mobile support units shall, while on duty,
29 be subject to the operational control of the authority in
30 charge of civil defense activities in the area in which
31 they are serving, and shall be reimbursed for all actual
32 and necessary travel and subsistence expenses.
33 The state shall reimburse a political subdivision for
34 the compensation paid and actual and necessary travel,
35 subsistence and maintenance expenses of employees of
36 such political subdivision while serving as members of
37 a mobile support unit and for all payments for death,
38 disability or injury of such employees incurred in the
39 course of such duty, and for all losses of or damage to
40 supplies and equipment of such political subdivision re-
41 sulting from the operation of such mobile support unit.

Sec. 8. Local Organization for Civil Defense.—Each
2 political subdivision of this state is hereby authorized
3 and directed to establish a local organization for civil
defense in accordance with the state civil defense plan and program. 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 shall be imposed. 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 nine of this article.

In carrying out the provisions of this article 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 as-
sistance to the victims of such disaster. Each political
subdivision is authorized 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), per-
taining to the performance of public work, entering into
contracts, the incurring of obligations, the employment
of temporary workers, the rental of equipment, the pur-
chase of supplies and materials, the levying of taxes,
and the appropriation and expenditure of public funds.

Sec. 9. Mutual Aid Arrangements.—The director of
each local organization for civil defense may, in collab-
orating with other public and private agencies within
this state, develop or cause to be developed mutual aid
arrangements for reciprocal civil defense aid and as-
sistance in case of disaster too great to be dealt with un-
assisted. Such arrangements shall be consistent with the
state civil defense plan and program, and in time of
emergency it shall be the duty of each local organization for civil defense to render assistance in accordance with the provisions of such mutual aid arrangements.

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

Sec. 10. Immunity and Exemption.—(a) All functions hereunder and all other activities relating to civil defense are hereby declared to be governmental functions. Neither the state nor any political subdivision thereof nor other agencies of the state or political subdivision thereof, nor, except in cases of willful misconduct, gross negligence, or bad faith, any civil defense worker complying with or reasonably attempting to comply with this act, or any order, rule or regulation promulgated pursuant to the provisions of this act, or pursuant to any ordinance relating to black-out or other precautionary measures enacted by any political subdivision of the state,
shall be liable for the death of or injury to persons, or for damage to property, as a result of any 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.

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

(c) As used in this section the term civil defense worker shall include any full or part-time paid, volunteer or auxiliary employee of this state, or other states, territories, possessions or the District of Columbia, of the federal government, or any neighboring country, or of any political subdivision thereof, or of any agency or organization, performing civil defense services at any
(d) Any civil defense worker, as defined in this section, performing civil defense services at any place in this state pursuant to agreements, compacts or arrangements for mutual aid and assistance, to which the state or a political subdivision thereof is a party, shall possess the same powers, duties, immunities and privileges he would ordinarily possess if performing his duties in the state, province or political subdivision thereof in which normally employed or rendering services.

Sec. 11. Private Liability.—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 or parts of such real estate or premises for the purpose of sheltering persons during an actual, impending, mock or practice attack shall, together with his successors in interest, if any, not be civilly liable for negligently causing the death of, or injury to, any per-
10 son on or about such real estate or premises for loss of, 
11 or damage to, the property of such person.

Sec. 12. Appropriations and Authority to Accept Serv-
2 ices, Gifts, Grants, and Loans.—Each political subdivision 
3 shall have the power to make appropriations in the man-
4 ner provided by law for making appropriations for the 
5 ordinary expenses of such political subdivision for the 
6 payment of expenses of its local organization for civil 
7 defense.
8 Whenever the federal government or any agency or 
9 officer thereof shall offer to the state, or through the 
10 state to any political subdivision thereof, services, equip-
11 ment, supplies, materials, or funds by way of gift, grant, 
12 or loan, for purposes of civil defense, the state, acting 
13 through the governor, or such political subdivision, act-
14 ing with the consent of the governor and through its 
15 executive officer or governing body, may accept such 
16 offer and upon such acceptance the governor of the state 
17 or executive officer or governing body of such political 
18 subdivision may authorize any officer of the state or of 
19 the political subdivision, 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 governor 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, materials, or funds on behalf of the state or such political subdivision, and subject to the terms of the offer.

Sec. 13. Utilization of Existing Services and Facilities.—In carrying out the provisions of this article, 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. 14. Political Activity Prohibited.—No organization
for civil defense established under the authority of this
article shall participate in any form of political activity,
nor shall it be employed directly or indirectly for politi-
cal purposes.

Sec. 15. Civil Defense Personnel.—No person shall be
employed or associated in any capacity in any civil de-
fense organization established under this article who ad-
vocates 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 en-
tering 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 ad-
vocate, nor am I a member of any political party or
organization that advocates the overthrow of the gov-
ernment 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. 16. Separability.—If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

Sec. 17. Enforcement.—It shall be the duty of every organization for civil defense 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 authority of this article. 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. 18. Arrest without Warrant.—A peace officer, when in full and distinctive 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 pur-
suant to this act. This authority shall be limited to those
rules and regulations which affect the public generally.

Sec. 19. Duration of Article.—The provisions of this
article shall expire and be inoperative on and after the
first day of July, one thousand nine hundred fifty-five.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

Takes effect 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 19th day of March, 1953.

Governor.

MAR 19 1953
D. PITT O'BRIEN,
SECRETARY OF STATE