WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1953

ENROLLED

SENATE BILL NO. 281

(By Mr. Amos)

PASSED March 13 1953

In Effect from Passage

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Senate Bill No. 281

(By Mr. Amos)

[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

3 of unprecedented size and destructiveness resulting from
4 enemy attack, sabotage or other hostile action, or from
5 fire, flood, earthquakes, or other natural causes, and in
6 order to insure that preparations of this state will be
7 adequate to deal with such disasters, and generally to
8 provide for the common defense and to protect the pub-
9 lic peace, health, and safety, and to preserve the lives and
10 property of the people of the state, it is hereby found and
11 declared to be necessary: (1) To create a state civil de-
12 fense agency, and to authorize the creation of local or-
13 ganizations for civil defense in the political subdivisions
14 of the state; (2) to confer upon the governor and upon
15 the executive heads of governing bodies of the political
16 subdivisions of the state the emergency powers provided
17 herein; and (3) to provide for the rendering of mutual
18 aid among the political subdivisions of the state and with
19 other states and to cooperate with the federal govern-
20 ment with respect to the carrying out of civil defense
21 functions.

22 It is further declared to be the purpose of this article
23 and the policy of the state that all civil defense functions

24 of this state be coordinated to the maximum extent with
25 the comparable functions of the federal government in-
26 cluding its various departments and agencies, of other
27 states and localities, and of private agencies of every type,
28 to the end that the most effective preparation and use
29 may be made of the nation's manpower, resources, and
30 facilities for dealing with any disaster that may occur.

Sec. 2. *Definitions.*—As used in this article:

2 (a) "Civil Defense" shall mean the preparation for and
3 the carrying out of all emergency functions, other than
4 functions for which military forces are primarily respon-
5 sible, to prevent, minimize and repair injury and damage
6 resulting from disasters caused by enemy attack, sabotage
7 or other hostile action, or by fire, flood, earthquake, or
8 other natural causes. These functions include, without
9 limitation, fire fighting services, police services, medical
10 and health services, rescue, engineering, air raid warning
11 services, communications, radiological, chemical and
12 other special weapons defense, evacuation of persons
13 from stricken areas, emergency welfare services,
14 emergency transportation, existing or properly

15 assigned functions of plant protection, temporary
16 restoration of public utility services, and other
17 functions related to civilian protection, together
18 with all other activities necessary or incidental to the
19 preparation for and carrying out of the foregoing func-
20 tions.

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

25 (c) "Mobile Support Unit" shall mean an organization
26 for civil defense created in accordance with the provisions
27 of this article by state or local authority to be dispatched
28 by the governor to supplement local organizations for
29 civil defense in a stricken area.

30 (d) "Political subdivision" shall mean any county or
31 municipal corporation.

Sec. 3. *State Civil Defense Agency.*—There is hereby
2 created within the executive branch of the state govern-
3 ment a department of civil defense, hereinafter called
4 the civil defense agency, and a director of civil defense,

5 hereinafter called the director, who shall be the head
6 thereof. The director shall be appointed by the governor,
7 with the advice and consent of the Senate, to serve dur-
8 ing the pleasure of the governor.

9 The director may employ such technical, clerical, steno-
10 graphic and other personnel and fix their compensation,
11 and may make such expenditures within the appropria-
12 tion therefor, or from other funds made available to him
13 for the purpose of civil defense, as may be necessary to
14 carry out the purposes of this article.

15 The director and other personnel of the civil defense
16 agency shall be provided with appropriate office space,
17 furniture, equipment, supplies, stationery and printing
18 in the same manner as provided for personnel of other
19 state agencies.

20 The director, subject to the direction and control of
21 the governor, shall be the executive head of the civil
22 defense agency and shall be responsible to the governor
23 for carrying out the program for civil defense of this
24 state. He shall coordinate the activities of all organiza-
25 tions for civil defense within the state, and shall maintain

26 liaison with and cooperate with civil defense agencies
27 and organizations of other states and of the federal gov-
28 ernment, and shall have such additional authority, duties,
29 and responsibilities authorized by this article as may be
30 prescribed by the governor.

Sec. 4. *Civil Defense Advisory Council.*—There is here-
2 by created a civil defense advisory council, hereinafter
3 called the council, which shall consist of seven members
4 to be appointed by the governor. The council shall ad-
5 vise the governor and the director on all matters pertain-
6 ing to civil defense. The governor shall serve as chair-
7 man of the council, and the members thereof shall serve
8 without compensation, but shall be reimbursed for the
9 reasonable and necessary expenses incurred in the per-
10 formance of their duties.

Sec. 5. *Civil Defense Powers of the Governor.*—The
2 governor shall have general direction and control of the
3 civil defense agency, and shall be responsible for the
4 carrying out of the provisions of this article, and in the
5 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-

27 cal subdivisions of this state, such plans to be integrated
28 into and coordinated with the civil defense plan and pro-
29 gram of this state to the fullest possible extent.

30 (3) In accordance with such plan and program for the
31 civil defense of this state, to procure supplies and equip-
32 ment, to institute training programs and public informa-
33 tion programs, and to take all other preparatory steps
34 including the partial or full mobilization of civil defense
35 organizations in advance of actual disaster, to insure the
36 furnishing of adequately trained and equipped forces of
37 civil defense personnel in time of need.

38 (4) To make such studies and surveys of the indus-
39 tries, resources, and facilities in this state as may be
40 necessary to ascertain the capabilities of the state for
41 civil defense, and to plan for the most efficient emergency
42 use thereof.

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

46 (6) To delegate any administrative authority vested

47 in him under this article, and to provide for the sub-
48 delegation of any such authority.

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

51 (8) To cooperate with the President and the heads of
52 the armed forces, the civil defense agency of the United
53 States, and other appropriate federal officers and agen-
54 cies, and with the officers and agencies of other states in
55 matters pertaining to the civil defense of the state and
56 nation, including the direction or control of (a) black-
57 outs and practice black-outs, air-raids drills, mobilization
58 of civil defense forces, and other tests and exercises;
59 (b) warnings and signals for drills or attacks and the
60 mechanical devices to be used in connection therewith;
61 (c) the effective screening or extinguishing of all lights
62 and lighting devices and appliances; (d) shutting off
63 water mains, gas mains, electric power connections and
64 the suspension of all other utility services; (e) the con-
65 duct of civilians and the movement and cessation of
66 movement of pedestrians and vehicular traffic during,
67 prior, and subsequent to drills or attack; (f) public meet-

68 ings or gatherings; and (g) the evacuation and reception
69 of the civilian population.

Sec. 6. *Emergency Powers.*—The provisions of this
2 section shall be operative only during the existence of a
3 state of civil defense emergency (referred to hereinafter
4 in this section as "emergency"). The existence of such
5 emergency may be proclaimed by the governor or by
6 concurrent resolution of the legislature if the governor
7 in such proclamation, or the legislature in such resolu-
8 tion, finds that an attack upon the United States has
9 occurred or is anticipated in the immediate future, or
10 that a natural disaster of major proportions has actually
11 occurred within this state, and that the safety and wel-
12 fare of the inhabitants of this state require an invocation
13 of the provisions of this section. Any such emergency,
14 whether proclaimed by the governor or by the legislature,
15 shall terminate upon the proclamation of the termination
16 thereof by the governor, or the passage by the legislature
17 of a concurrent resolution terminating such emergency.
18 During such period as such state of emergency exists or

19 continues, the governor shall have and may exercise the
20 following additional emergency powers:
21 (a) To enforce all laws, rules, and regulations, relating
22 to civil defense and to assume direct operational control
23 of any or all civil defense forces and helpers in the state;
24 (b) To sell, lend, lease, give, transfer, or deliver ma-
25 terials or perform services for civil defense purposes on
26 such terms and conditions as the governor shall pre-
27 scribe and without regard to the limitations of any exist-
28 ing law, and to account to the state treasurer for any
29 funds received for such property;
30 (c) To procure materials and facilities for civil de-
31 fense by purchase, condemnation under the provisions of
32 chapter fifty-four of the code, or seizure pending institu-
33 tion of condemnation proceedings within thirty days from
34 the seizing thereof, and to construct, lease, transport,
35 store, maintain, renovate, or distribute such materials
36 and facilities. Compensation for the property so pro-
37 cured shall be as is provided in chapter fifty-four of the
38 code;
39 (d) To provide for and compel the evacuation of all

40 or part of the population from any stricken or threatened
41 area or areas within the state and to take such steps as
42 are necessary for the receipt and care of such evacuees;
43 (e) Subject to the provisions of the state constitution,
44 to remove from office any public officer having adminis-
45 trative responsibilities under this act for willful failure
46 to obey an order, rule or regulation adopted pursuant to
47 this act. Such removal shall be upon charges after serv-
48 ice upon such person of a copy of such charges and after
49 giving him an opportunity to be heard in his defense.
50 Pending the preparation and disposition of charges, the
51 governor may suspend such person for a period not ex-
52 ceeding thirty (30) days. A vacancy resulting from re-
53 moval or suspension pursuant to this section shall be
54 filled by the governor until it is filled as otherwise pro-
55 vided by law;
56 (f) To perform and exercise such other functions,
57 powers, and duties as are necessary to promote and se-
58 cure the safety and protection of the civilian population.

Sec. 7. *Mobile Support Units.*—The governor or his
2 duly designated representative is authorized to create

3 and establish such number of mobile support units as
4 may be necessary to reinforce civil defense organizations
5 in stricken areas and with due consideration of the plans
6 of the federal government and of other states. He shall
7 appoint a commander for each such unit who shall have
8 primary responsibility for the organization, administra-
9 tion and operation of such unit. Mobile support units
10 shall be called to duty upon orders of the governor and
11 shall perform their functions in any part of the state, or,
12 upon the conditions specified in this section, in other
13 states.

14 Personnel of mobile support units while on duty,
15 whether within or without the state, shall: (1) If they
16 are employees of the state, have the powers, duties, rights,
17 privileges and immunities and receive the compensation
18 incidental to their employment; (2) if they are employees
19 of a political subdivision of the state, and whether serv-
20 ing within or without such political subdivision, have
21 the powers, duties, rights, privileges and immunities and
22 receive the compensation incidental to their employment;
23 and (3) if they are not employees of the state or a politi-

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

4 defense in accordance with the state civil defense plan
5 and program. Such political subdivision may confer or
6 authorize the conferring upon members of the auxiliary
7 police the powers of peace officers, subject to such re-
8 strictions as shall be imposed. Each local organization
9 for civil defense shall have a director who shall be ap-
10 pointed by the local civil defense council, and who shall
11 have direct responsibility for the organization, adminis-
12 tration and operation of such local organization for civil
13 defense, subject to the direction and control of such
14 local civil defense council. Each local organization for
15 civil defense shall perform civil defense functions within
16 the territorial limits of the political subdivision within
17 which it is organized, and, in addition, shall conduct such
18 functions outside of such territorial limits as may be
19 required pursuant to the provisions of section nine of
20 this article.

21 In carrying out the provisions of this article each po-
22 litical subdivision, in which any disaster as, described
23 in section one hereof occurs, shall have the power to
24 enter into contracts and incur obligations necessary to

25 combat such disaster, protecting the health and safety
26 of persons and property, and providing emergency as-
27 sistance to the victims of such disaster. Each political
28 subdivision is authorized to exercise the powers vested
29 under this section in the light of the exigencies of the
30 extreme emergency situation without regard to time-
31 consuming procedures and formalities prescribed by law,
32 (excepting mandatory constitutional requirements), per-
33 taining to the performance of public work, entering into
34 contracts, the incurring of obligations, the employment
35 of temporary workers, the rental of equipment, the pur-
36 chase of supplies and materials, the levying of taxes,
37 and the appropriation and expenditure of public funds.

Sec. 9. *Mutual Aid Arrangements.*—The director of
2 each local organization for civil defense may, in collab-
3 orating with other public and private agencies within
4 this state, develop or cause to be developed mutual aid
5 arrangements for reciprocal civil defense aid and as-
6 sistance in case of disaster too great to be dealt with un-
7 assisted. Such arrangements shall be consistent with the
8 state civil defense plan and program, and in time of

9 emergency it shall be the duty of each local organization
10 for civil defense to render assistance in accordance with
11 the provisions of such mutual aid arrangements.

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

Sec. 10. *Immunity and Exemption.*—(a) All functions
2 hereunder and all other activities relating to civil de-
3 fense are hereby declared to be governmental functions.
4 Neither the state nor any political subdivision thereof
5 nor other agencies of the state or political subdivision
6 thereof, nor, except in cases of willful misconduct, gross
7 negligence, or bad faith, any civil defense worker com-
8 plying with or reasonably attempting to comply with
9 this act, or any order, rule or regulation promulgated
10 pursuant to the provisions of this act, or pursuant to any
11 ordinance relating to black-out or other precautionary
12 measures enacted by any political subdivision of the state,

13 shall be liable for the death of or injury to persons, or
14 for damage to property, as a result of any such activity.
15 The provisions of this section shall not affect the right
16 of any person to receive benefits to which he would
17 otherwise be entitled under this act, or under the Work-
18 men's Compensation Law, or under any pension law,
19 nor the right of any such person to receive any benefits
20 or compensation under any act of Congress.

21 (b) Any requirement for a license to practice any pro-
22 fessional, mechanical or other skill shall not apply to
23 any authorized civil defense worker who shall, in the
24 course of performing his duties as such, practice such
25 professional, mechanical or other skill during a civil de-
26 fense emergency.

27 (c) As used in this section the term civil defense
28 worker shall include any full or part-time paid, volun-
29 teer or auxiliary employee of this state, or other states,
30 territories, possessions or the District of Columbia, of
31 the federal government, or any neighboring country, or
32 of any political subdivision thereof, or of any agency
33 or organization, performing civil defense services at any

34 place in this state subject to the order or control of, or
35 pursuant to a request of, the state government or any
36 political subdivision thereof.

37 (d) Any civil defense worker, as defined in this sec-
38 tion, performing civil defense services at any place in
39 this state pursuant to agreements, compacts or arrange-
40 ments for mutual aid and assistance, to which the state
41 or a political subdivision thereof is a party, shall possess
42 the same powers, duties, immunities and privileges he
43 would ordinarily possess if performing his duties in the
44 state, province or political subdivision thereof in which
45 normally employed or rendering services.

Sec. 11. *Private Liability.*—Any person owning or con-
2 trolling real estate or other premises who voluntarily and
3 without compensation grants a license or privilege, or
4 otherwise permits the designation or use of the whole
5 or any part or parts of such real estate or premises for
6 the purpose of sheltering persons during an actual, im-
7 pending, mock or practice attack shall, together with his
8 successors in interest, if any, not be civilly liable for
9 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

20 such services, equipment, supplies, materials, or funds
21 on behalf of the state or such political subdivision, and
22 subject to the terms of the offer and the rules and reg-
23 ulations, if any, of the agency making the offer.

24 Whenever any person, firm or corporation shall offer
25 to the state or to any political subdivision thereof, serv-
26 ices, equipment, supplies, materials, or funds by way of
27 gift, grant or loan, for purposes of civil defense, the
28 state, acting through the governor, or such political sub-
29 division, acting through its executive officer or governing
30 body, may accept such offer and upon such acceptance
31 the governor of the state or executive officer or govern-
32 ing body of such political subdivision may authorize any
33 officer of the state or of the political subdivision, as the
34 case may be, to receive such services, equipment, sup-
35 plies, materials, or funds on behalf of the state or such
36 political subdivision, and subject to the terms of the
37 offer.

Sec. 13. *Utilization of Existing Services and Facilities.*—
2 In carrying out the provisions of this article, the gov-
3 ernor and the executive officers or governing bodies of

4 the political subdivisions of the state are directed to
5 utilize the services, equipment, supplies and facilities
6 of existing departments, offices, and agencies of the state
7 and of the political subdivisions thereof to the maximum
8 extent practicable, and the officers and personnel of all
9 such departments, offices, and agencies are directed to
10 cooperate with and extend such services and facilities
11 to the governor and to the civil defense organizations
12 of the state upon request.

Sec. 14. *Political Activity Prohibited.*—No organization
2 for civil defense established under the authority of this
3 article shall participate in any form of political activity,
4 nor shall it be employed directly or indirectly for politi-
5 cal purposes.

Sec. 15. *Civil Defense Personnel.*—No person shall be
2 employed or associated in any capacity in any civil de-
3 fense organization established under this article who ad-
4 vocates or has advocated a change by force or violence
5 in the constitutional form of the government of the
6 United States or in this state or the overthrow of any
7 government in the United States by force or violence,

8 or who has been convicted of or is under indictment or
9 information charging any subversive act against the
10 United States. Each person who is appointed to serve
11 in an organization for civil defense shall, before en-
12 tering upon his duties, take an oath, in writing, before
13 a person authorized to administer oaths in this state,
14 which oath shall be substantially as follows:

15 "I, ..., do solemnly swear, or affirm, that
16 I will support and defend the constitution of the United
17 States and the constitution of the state of West Virginia,
18 against all enemies, foreign and domestic; that I will
19 bear true faith and allegiance to the same; that I take
20 this obligation freely, without any mental reservation
21 or purpose of evasion; and that I will well and faithfully
22 discharge the duties upon which I am about to enter.

23 "And I do further swear, or affirm, that I do not ad-
24 vocate, nor am I a member of any political party or
25 organization that advocates the overthrow of the gov-
26 ernment of the United States or of this state by force or
27 violence; and that during such time as I am a member
28 of the (name of organization), I will not advocate nor

29 become a member of any political party or organization
30 that advocates the overthrow of the government of the
31 United States or of this state by force or violence."

Sec. 16. *Separability.*—If any provision of this article
2 or the application thereof to any person or circumstance
3 is held invalid, such invalidity shall not affect other pro-
4 visions or applications of the article which can be given
5 effect without the invalid provision or application, and
6 to this end the provisions of this article are declared to
7 be severable.

Sec. 17. *Enforcement.*—It shall be the duty of every
2 organization for civil defense established pursuant to this
3 article and of the officers thereof to execute and enforce
4 such orders, rules and regulations as may be made by the
5 governor under authority of this article. Each such or-
6 ganization shall have available for inspection at its office
7 all orders, rules and regulations made by the governor,
8 or under his authority.

Sec. 18. *Arrest without Warrant.*—A peace officer, when
2 in full and distinctive uniform or displaying a badge or
3 other insignia of authority, may arrest without a warrant

4 any person violating or attempting to violate in such
5 officer's presence any order, rule, or regulation made pur-
6 suant to this act. This authority shall be limited to those
7 rules and regulations which affect the public generally.

Sec. 19. *Duration of Article.*—The provisions of this
2 article shall expire and be inoperative on and after the
3 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.

Filed in the Office of the Secretary of State of West Virginia MAR 19 1953

D. PITT O'BRIEN,

SECRETARY OF STATE