

WEST VIRGINIA LEGISLATURE

SECOND EXTRAORDINARY SESSION, 1990

ENROLLED

SENATE BILL NO. 15

(By Senator Burdette, Mr. President and / Speaker)
(By Request of the Executive)

PASSED June 27, 1990
In Effect July 1, 1990 . Passage

ENROLLED
Senate Bill No. 15

(BY SENATORS BURDETTE, MR. PRESIDENT, AND HARMAN)
(BY REQUEST OF THE EXECUTIVE)

[Passed June 27, 1990; to take effect July 1, 1990.]

AN ACT to amend and reenact sections two, four, twenty and twenty-three, article five, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article five by adding thereto six new sections, designated sections four-b, four-c, twenty-four, twenty-five, twenty-six and twenty-seven, all relating to the abolishment of the emergency services advisory council and the creation of a disaster recovery board; its members, terms, meetings, officers, qualifications, compensation, vacancies, quorums, powers and duties; providing definitions; providing for the creation of a disaster recovery trust fund; providing for acceptance and disbursement of assets and funds from said fund; providing for investments of funds; providing for a semi-annual report by the director relating to certain disaster prevention measures; providing a tax exemption for the disaster recovery trust fund; providing permissible uses of funds and assets of the disaster recovery trust fund; providing for an annual report; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

That sections two, four, twenty and twenty-three, article

five, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article five be further amended by adding thereto six new sections, designated sections four-b, four-c, twenty-four, twenty-five, twenty-six and twenty-seven, all to read as follows:

ARTICLE 5. EMERGENCY SERVICES.

§15-5-2. Definitions.

1 As used in this article:

2 (a) "Emergency services" means the preparation for
3 and the carrying out of all emergency functions, other
4 than functions for which military forces are primarily
5 responsible, to prevent, minimize and repair injury
6 and damage resulting from disasters caused by enemy
7 attack, sabotage or other natural or other man-made
8 causes. These functions include, without limitation,
9 fire-fighting services, police services, medical and
10 health services, communications, radiological, chemi-
11 cal and other special weapons defense, evacuation of
12 persons from stricken areas, emergency welfare
13 services, emergency transportation, existing or prop-
14 erly assigned functions of plant protection, temporary
15 restoration of public utility services and other func-
16 tions related to civilian protection, together with all
17 other activities necessary or incidental to the prepara-
18 tion for and carrying out of the foregoing functions.
19 Disaster includes the imminent threat of disaster as
20 well as its occurrence and any power or authority
21 exercisable on account of a disaster may be exercised
22 during the period when there is an imminent threat
23 thereof;

24 (b) "Local organization for emergency services"
25 means an organization created in accordance with the
26 provisions of this article by state or local authority to
27 perform local emergency service function;

28 (c) "Mobile support unit" means an organization for
29 emergency services created in accordance with the
30 provisions of this article by state or local authority to
31 be dispatched by the governor to supplement local

32 organizations for emergency services in a stricken
33 area;

34 (d) "Political subdivision" means any county or
35 municipal corporation in this state;

36 (e) "Board" means the West Virginia disaster recov-
37 ery board created by this article;

38 (f) "Code" means the code of West Virginia, one
39 thousand nine hundred thirty-one, as amended;

40 (g) "Community facilities" means a specific work or
41 improvement within this state or a specific item of
42 equipment or tangible personal property owned or
43 operated by any political subdivision or nonprofit
44 corporation and used within this state to provide any
45 essential service to the general public;

46 (h) "Disaster" means the occurrence or imminent
47 threat of widespread or severe damage, injury, or loss
48 of life or property resulting from any natural or man-
49 made cause, including fire, flood, earthquake, wind,
50 snow, storm, chemical or oil spill or other water or soil
51 contamination, epidemic, air contamination, blight,
52 drought, infestation or other public calamity requiring
53 emergency action;

54 (i) "Disaster recovery activities" means activities
55 undertaken prior to, during or following a disaster to
56 provide, or to participate in the provision of, emer-
57 gency services, temporary housing, residential hous-
58 ing, essential business activities and community
59 facilities;

60 (j) "Emergency services" means the preparation for
61 and the carrying out of all emergency functions to
62 prevent, minimize and repair injury and damage
63 resulting from a disaster, including, without limitation,
64 fire-fighting services, police services, medical and
65 health services, communications, evacuation of per-
66 sons and property from stricken areas, welfare servi-
67 ces, transportation, temporary restoration of public
68 utility services, and other functions related to the
69 health, safety and welfare of the citizens of this state,
70 together with all other activities necessary or inciden-

71 tal to the preparation for and the carrying out of the
72 foregoing functions;

73 (k) "Essential business activities" means a specific
74 work or improvement within this state or a specific
75 item of equipment or tangible personal property used
76 within this state by any person to provide any essen-
77 tial goods or service deemed by the authority to be
78 necessary for recovery from a disaster;

79 (l) "Person" means any individual, corporation,
80 voluntary organization or entity, partnership, firm or
81 other association, organization or entity organized or
82 existing under the laws of this or any other state or
83 country;

84 (m) "Recovery fund" means the West Virginia
85 disaster recovery trust fund created by this article;

86 (n) "Residential housing" means a specific work or
87 improvement within this state undertaken primarily
88 to provide dwelling accommodations, including the
89 acquisition, construction or rehabilitation of land,
90 buildings and improvements thereto, for residential
91 housing, including, but not limited to, facilities for
92 temporary housing and emergency housing, and such
93 other nonhousing facilities as may be incidental or
94 appurtenant thereto; and

95 (o) "Temporary housing" means a specific work or
96 improvement within this state undertaken primarily
97 to provide dwelling accommodations, including the
98 acquisition, construction or rehabilitation of land,
99 buildings and improvements thereto, for temporary
100 residential shelters or housing for victims of a disaster
101 and such other nonhousing facilities as may be inci-
102 dental or appurtenant thereto.

**§15-5-4. West Virginia Disaster Recovery Board created;
organization of board; appointment of board
members; term of office and expenses of
board members; meetings.**

1 (a) There is hereby created the West Virginia
2 disaster recovery board. The board shall advise the
3 governor and the director on all matters pertaining to

4 emergency services and to perform such other duties
5 as set forth in this article. The board shall be com-
6 posed of nine members, seven of whom shall be
7 appointed by the governor by and with the advice and
8 consent of the senate, and one of whom shall be the
9 governor or his or her designee, who shall be chair-
10 man of the board and one whom shall be the secretary
11 of the department of public safety or his or her
12 designee. The successor of each such appointed mem-
13 ber shall be appointed in the same manner as the
14 original appointments were made. No more than four
15 of the appointed board members shall at any one time
16 belong to the same political party: *Provided*, That each
17 Congressional district of this state shall be represented
18 by a member of the board.

19 (b) The provisions of this subsection apply to the
20 seven members appointed by the governor. They shall
21 be appointed for overlapping terms of three years and
22 until their respective successors have been appointed
23 and have qualified. For the purpose of original
24 appointments, three members shall be appointed for a
25 term of three years, two members shall be appointed
26 for a term of two years, and two members shall be
27 appointed for a term of one year. Members may be
28 reappointed for any number of terms. Before entering
29 upon the performance of his or her duties, each
30 member shall take and subscribe to the oath pres-
31 cribed by section five, article four of the constitution
32 of this state. Vacancies shall be filled by appointment
33 by the governor for the unexpired term of the mem-
34 ber whose office shall be vacant and such appointment
35 shall be made within sixty days of the occurrence of
36 such vacancy. Members shall receive no compensation
37 for the performance of their duties as members, but
38 shall be entitled to be reimbursed for all reasonable
39 and necessary expenses actually incurred in the
40 performance of their duties.

41 (c) A majority of the members of the board consti-
42 tutes a quorum and meetings shall be held at the call
43 of the chairman. No vacancy or absence in the mem-
44 bership of the board shall impair the rights of a

45 quorum by a vote of the majority participating in such
46 meeting to exercise all the rights and perform all the
47 duties of the board and the authority.

48 (d) Upon the occurrence of a disaster requiring
49 immediate action by the board, meetings of the board
50 may be held by telephone conference call or other
51 electronic communications and shall be exempt from
52 the notice requirements of article nine-a, chapter six
53 of this code. Any action taken pursuant to a vote of the
54 board at any such meeting shall not be subject to
55 invalidation by a person adversely affected by such
56 action.

57 (e) The board shall annually elect one of the
58 appointed members as vice chairman, and shall
59 appoint one of its appointed members as secretary-
60 treasurer. The member appointed as secretary-
61 treasurer shall give bond in the sum of fifty thousand
62 dollars in the manner provided in article two, chapter
63 six of this code.

64 (f) All expenses incurred by the board shall be
65 payable solely from funds of the board or from funds
66 appropriated for such purpose by the Legislature and
67 no liability or obligation shall be incurred by the board
68 beyond the extent to which moneys are available from
69 funds of the board or from such appropriations.

70 (g) Due to the fact that a natural disaster could
71 strike any part of the state at any time, it is necessary
72 to effectuate a means to immediately implement the
73 provisions of this article. Therefore, until the board
74 has been appointed the governor shall have the
75 authority to:

76 (1) Accept and expend any private funds and expend
77 no more than one million dollars of the governor's
78 contingency fund for fiscal year one thousand nine
79 hundred ninety to provide disaster relief as authorized
80 in this article for any counties where disasters may
81 occur before the board is appointed; and

82 (2) Report to the board when it is appointed on
83 moneys expended and actions taken so that the board

84 may include this information in its annual report
85 required by section twelve of this article.

**§15-5-4b. West Virginia Disaster Recovery Board to disburse
funds from Recovery fund.**

1 The board shall have the power, upon its own
2 determination that a disaster has occurred or is about
3 to occur in this state, to disburse funds from the
4 disaster relief recovery trust fund created pursuant to
5 section twenty-four of this article to any person,
6 political subdivision or local organization for emer-
7 gency services in such amounts and in such manner,
8 and to take such other actions, as the board may
9 determine is necessary or appropriate in order to
10 provide assistance to any person, political subdivision
11 or local organization for emergency services respond-
12 ing to or recovering from the disaster, or otherwise
13 involved in disaster recovery activities.

**§15-5-4c. Powers and duties of the West Virginia Disaster
Recovery Board.**

1 The board is hereby granted, has and may exercise
2 all powers necessary or appropriate to carry out and
3 effectuate the purposes set forth in section four-b of
4 this article. The authority has the power:

5 (1) To accept appropriations, gifts, grants, bequests
6 and devises from any source, public or private, for
7 deposit into the recovery fund, and to use or dispose
8 of the same to provide assistance to any person,
9 political subdivision or local organization for emer-
10 gency services responding to or recovering from a
11 disaster, or otherwise involved in disaster recovery
12 activities;

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

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

19 (4) To sue and be sued;

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

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

25 (7) To provide for the deposit of any funds or assets
26 of the West Virginia disaster relief recovery trust fund
27 with the state board of investments for investment;

28 (8) To procure insurance against any loss in connec-
29 tion with its property in such amounts, and from such
30 insurers, as may be necessary or desirable;

31 (9) To use the recovery trust fund to pay the costs
32 incurred by any state department or agency for the
33 purpose of obtaining property appraisals and other
34 certifications necessary to justify the involvement of
35 the federal emergency management agency and to
36 allow its determination of a presidentially declared
37 disaster;

38 (10) To establish, or assist in the establishment of,
39 temporary housing and residential housing by, with or
40 for political subdivisions declared to be in a disaster
41 area by the federal emergency management agency or
42 other agency or instrumentality of the United States
43 or by the governor of this state;

44 (11) To enter into purchase, lease, or other arrange-
45 ments with an agency of the United States or this state
46 for temporary housing or residential housing units to
47 be occupied by disaster victims and make such units
48 available to any political subdivision or persons;

49 (12) To assist political subdivisions, local organiza-
50 tions for emergency services and nonprofit corpora-
51 tions in acquiring sites necessary for temporary
52 housing or residential housing for disaster victims and
53 in otherwise preparing the sites to receive and use
54 temporary housing or residential housing units,
55 including payment of transportation charges, by
56 advancing or lending funds available to the board from
57 the recovery fund;

58 (13) To make grants and provide technical services to
59 assist in the purchase or other acquisition, planning,
60 processing, design, construction, or rehabilitation,
61 improvement or operation of temporary housing or
62 residential housing: *Provided*, That no such grant or
63 other financial assistance shall be provided except
64 upon a written finding by the board that such assis-
65 tance and the manner in which it will be provided
66 constitute a disaster recovery activity;

67 (14) To make or participate in the making of insured
68 or uninsured construction and permanent loans or
69 grants for temporary housing or residential housing,
70 community facilities and essential business activities:
71 *Provided*, That no such loan or grant shall be made
72 except upon a written finding by the board that the
73 loan or grant and the manner in which it will be
74 provided constitute a disaster recovery activity and
75 that the loan or grant is not otherwise available,
76 wholly or in part, from a private or public lender upon
77 reasonably equivalent terms and conditions; and

78 (15) Do all acts necessary and proper to carry out the
79 powers granted to the board under this article.

§15-5-20. Disaster prevention.

1 (a) In addition to disaster prevention measures as
2 included in the state, local, regional and interjurisdic-
3 tional disaster plans, the governor shall consider on a
4 continuing basis steps that could be taken to prevent
5 or reduce the harmful consequences of disasters. At
6 his direction, and pursuant to any other authority and
7 competence they have, state agencies, including, but
8 not limited to, those charged with responsibilities in
9 connection with flood plain management, stream
10 encroachment and flow regulation, weather modifica-
11 tion, fire prevention and control, air quality, public
12 works, land use and land-use planning and construc-
13 tion standards, shall make studies of disaster
14 prevention-related matters. The governor, from time
15 to time, shall make such recommendation to the
16 Legislature, political subdivisions and other appropri-
17 ate public and private entities as may facilitate

18 measures for prevention or reduction of the harmful
19 consequences of disasters.

20 (b) At the request of and in conjunction with the
21 office of emergency services, the divisions of energy,
22 natural resources and highways and any state depart-
23 ment insured by the board of risk and insurance
24 management shall keep land use and construction of
25 structures and other facilities under continuing study
26 and identify areas which are particularly susceptible
27 to severe land shifting, subsidence, flooding or other
28 catastrophic occurrences. Such studies shall concen-
29 trate on means of reducing or avoiding the dangers
30 caused by such occurrences and the consequences
31 thereof.

32 (c) In conjunction with the board of risk and insur-
33 ance management and such other offices or agencies of
34 state government as the board may deem appropriate,
35 the director of the office of emergency services shall
36 make a semi-annual report to the West Virginia
37 disaster recovery board on the existence and location
38 of abandoned motor vehicles, trash, debris and refuse
39 that may in the event of a disaster cause an obstruc-
40 tion to natural water flow and thereby cause excessive
41 and more extensive damage to property. The report
42 shall further set forth plan to remove and dispose of
43 such trash, debris and refuse within the following
44 semi-annual reporting period.

§15-5-23. Severability; conflicts.

1 (a) If any section, subsection, subdivision, provision,
2 clause or phrase of this article or the application
3 thereof to any person or circumstance is held uncon-
4 stitutional or invalid, such unconstitutionality or
5 invalidity shall not affect other sections, subsections,
6 subdivisions, provisions, clauses or phrases or applica-
7 tions of the article, and to this end each and every
8 section, subsection, subdivision, provision, clause and
9 phrase of this article is declared to be severable. The
10 Legislature hereby declares that it would have enacted
11 the remaining sections, subsections, provisions, clauses
12 and phrases of this article even if it had known that

13 any section, subsection, subdivision, provision, clause
14 and phrase thereof would be declared to be unconsti-
15 tutional or invalid, and that it would have enacted this
16 article even if it had known that the application
17 thereof to any person or circumstance would be held
18 to be unconstitutional or invalid.

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

**§15-5-24. Disaster recovery trust fund; use of funds of
authority.**

1 (a) There is hereby created a special trust fund
2 which shall be designated and known as the "West
3 Virginia Disaster Recovery Trust Fund" to be admin-
4 istered by the West Virginia disaster recovery board.
5 The recovery fund shall consist of (i) any appropria-
6 tions, grants, gifts, contributions or revenues received
7 by the recovery fund from any source, public or
8 private, and (ii) all income earned on moneys, proper-
9 ties and assets held in the recovery fund. When any
10 funds are received by the board from any source, they
11 shall be paid into the recovery fund, and shall be
12 disbursed and otherwise managed in the manner set
13 forth in this article. The recovery fund shall be treated
14 by the auditor and treasurer as a special revenue fund
15 and not as part of the general revenues of the state.

16 (b) All moneys, properties and assets acquired by the
17 West Virginia disaster recovery board shall be held by
18 it in trust for the purposes of carrying out its powers
19 and duties, and shall be used and re-used in accor-
20 dance with the purposes and provisions of this article.
21 Such moneys, properties and assets shall at no time be
22 commingled with other public funds. Disbursements
23 from the recovery fund shall be made only upon the
24 written requisition of the chairman accompanied by a
25 certified resolution of the board. If no need exists for
26 immediate use or disbursement, moneys, properties

27 and assets in the recovery fund shall be invested or
28 reinvested by the board as provided in this article.

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

1 No portion of the recovery fund shall inure to the
2 benefit of or be distributable to members of the West
3 Virginia disaster recovery board or other private
4 persons except that the board shall be authorized and
5 empowered to make loans or grants and exercise its
6 other powers as specified in this article in furtherance
7 of its purpose: *Provided*, That no such loans or grants
8 shall be made to and no property shall be purchased
9 or leased from, or sold, leased or otherwise disposed of
10 to, any member or officer of the board except as
11 provided under subsection (d), section five, article two,
12 chapter six-b of this code.

§15-5-26. Tax exemption.

1 The board shall not be required to pay any taxes and
2 assessments to the state or any political subdivision of
3 the state upon any of its moneys, properties or assets
4 or upon its obligations or other evidences of indebted-
5 ness pursuant to the provisions of this article, or upon
6 any moneys, funds, revenues or other income held or
7 received by the West Virginia disaster recovery board.

§15-5-27. Annual report.

1 The board shall prepare and transmit to the Legis-
2 lature annually as of the thirtieth day of June a report
3 of its disaster recovery activities. The report shall
4 include the number of requests for distributions, the
5 number of distributions made and the amount of each
6 distribution; a listing by source and amount of moneys,
7 properties and assets that have been contributed to the
8 recovery fund since the thirtieth day of June of the
9 preceding year; the outstanding balance of the recov-
10 ery fund; and an itemized list of any administrative
11 costs incurred.

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

Frederick Z. Parker
.....
Chairman Senate Committee

Bernard V. Kelly
.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1990.

Barbara A. Allen
.....
Clerk of the Senate

Donald J. Kopp
.....
Clerk of the House of Delegates

Kath Bondelle
.....
President of the Senate

Robert D. Chelms
.....
Speaker House of Delegates

The within ~~is approved~~ this the 11th

day of July, 1990.

Gaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date *7/2/90*

Time *2:14 pm*

RECEIVED

1990 JUL 11 AM 11:09

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE