WEST VIRGINIA LEGISLATURE
SECOND EXTRAORDINARY SESSION, 1990

ENROLLED

SENATE BILL NO. 15

(Passed June 27, 1990)

In Effect July 4, 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.


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
organizations for emergency services in a stricken area;

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

(e) "Board" means the West Virginia disaster recovery board created by this article;

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

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

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

(i) "Disaster recovery activities" means activities undertaken prior to, during or following a disaster to provide, or to participate in the provision of, emergency services, temporary housing, residential housing, essential business activities and community facilities;

(j) "Emergency services" means the preparation for and the carrying out of all emergency functions to prevent, minimize and repair injury and damage resulting from a disaster, including, without limitation, fire-fighting services, police services, medical and health services, communications, evacuation of persons and property from stricken areas, welfare services, transportation, temporary restoration of public utility services, and other functions related to the health, safety and welfare of the citizens of this state, together with all other activities necessary or inciden-
tal to the preparation for and the carrying out of the
foregoing functions;

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

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

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

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

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

(a) There is hereby created the West Virginia
disaster recovery board. The board shall advise the
governor and the director on all matters pertaining to
emergency services and to perform such other duties as set forth in this article. The board shall be composed of nine members, seven of whom shall be appointed by the governor by and with the advice and consent of the senate, and one of whom shall be the governor or his or her designee, who shall be chairman of the board and one whom shall be the secretary of the department of public safety or his or her designee. The successor of each such appointed member shall be appointed in the same manner as the original appointments were made. No more than four of the appointed board members shall at any one time belong to the same political party: Provided, That each Congressional district of this state shall be represented by a member of the board.

(b) The provisions of this subsection apply to the seven members appointed by the governor. They shall be appointed for overlapping terms of three years and until their respective successors have been appointed and have qualified. For the purpose of original appointments, three members shall be appointed for a term of three years, two members shall be appointed for a term of two years, and two members shall be appointed for a term of one year. Members may be reappointed for any number of terms. Before entering upon the performance of his or her duties, each member shall take and subscribe to the oath prescribed by section five, article four of the constitution of this state. Vacancies shall be filled by appointment by the governor for the unexpired term of the member whose office shall be vacant and such appointment shall be made within sixty days of the occurrence of such vacancy. Members shall receive no compensation for the performance of their duties as members, but shall be entitled to be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties.

(c) A majority of the members of the board constitutes a quorum and meetings shall be held at the call of the chairman. No vacancy or absence in the membership of the board shall impair the rights of a
quorum by a vote of the majority participating in such meeting to exercise all the rights and perform all the duties of the board and the authority.

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

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

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

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

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

(2) Report to the board when it is appointed on moneys expended and actions taken so that the board
may include this information in its annual report required by section twelve of this article.

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

The board shall have the power, upon its own determination that a disaster has occurred or is about to occur in this state, to disburse funds from the disaster relief recovery trust fund created pursuant to section twenty-four of this article to any person, political subdivision or local organization for emergency services in such amounts and in such manner, and to take such other actions, as the board may determine is necessary or appropriate in order to provide assistance to any person, political subdivision or local organization for emergency services responding to or recovering from the disaster, or otherwise involved in disaster recovery activities.

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

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

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

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

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

(4) To sue and be sued;
(5) To acquire, hold and dispose of real and personal property;

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

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

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

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

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

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

(12) To assist political subdivisions, local organizations for emergency services and nonprofit corporations in acquiring sites necessary for temporary housing or residential housing for disaster victims and in otherwise preparing the sites to receive and use temporary housing or residential housing units, including payment of transportation charges, by advancing or lending funds available to the board from the recovery fund;
(13) To make grants and provide technical services to assist in the purchase or other acquisition, planning, processing, design, construction, or rehabilitation, improvement or operation of temporary housing or residential housing: Provided, That no such grant or other financial assistance shall be provided except upon a written finding by the board that such assistance and the manner in which it will be provided constitute a disaster recovery activity;

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

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

§15-5-20. Disaster prevention.

(a) In addition to disaster prevention measures as included in the state, local, regional and interjurisdictional disaster plans, the governor shall consider on a continuing basis steps that could be taken to prevent or reduce the harmful consequences of disasters. At his direction, and pursuant to any other authority and competence they have, state agencies, including, but not limited to, those charged with responsibilities in connection with flood plain management, stream encroachment and flow regulation, weather modification, fire prevention and control, air quality, public works, land use and land-use planning and construction standards, shall make studies of disaster prevention-related matters. The governor, from time to time, shall make such recommendation to the Legislature, political subdivisions and other appropriate public and private entities as may facilitate
measures for prevention or reduction of the harmful consequences of disasters.

(b) At the request of and in conjunction with the office of emergency services, the divisions of energy, natural resources and highways and any state department insured by the board of risk and insurance management shall keep land use and construction of structures and other facilities under continuing study and identify areas which are particularly susceptible to severe land shifting, subsidence, flooding or other catastrophic occurrences. Such studies shall concentrate on means of reducing or avoiding the dangers caused by such occurrences and the consequences thereof.

c) In conjunction with the board of risk and insurance management and such other offices or agencies of state government as the board may deem appropriate, the director of the office of emergency services shall make a semi-annual report to the West Virginia disaster recovery board on the existence and location of abandoned motor vehicles, trash, debris and refuse that may in the event of a disaster cause an obstruction to natural water flow and thereby cause excessive and more extensive damage to property. The report shall further set forth plan to remove and dispose of such trash, debris and refuse within the following semi-annual reporting period.

§15-5-23. Severability; conflicts.

(a) If any section, subsection, subdivision, provision, clause or phrase of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other sections, subsections, subdivisions, provisions, clauses or phrases or applications of the article, and to this end each and every section, subsection, subdivision, provision, clause and phrase of this article is declared to be severable. The Legislature hereby declares that it would have enacted the remaining sections, subsections, provisions, clauses and phrases of this article even if it had known that
any section, subsection, subdivision, provision, clause
and phrase thereof would be declared to be unconsti-
tutional or invalid, and that it would have enacted this
article even if it had known that the application
thereof to any person or circumstance would be held
to be unconstitutional or invalid.

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

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

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

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

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


The board shall not be required to pay any taxes and assessments to the state or any political subdivision of the state upon any of its moneys, properties or assets or upon its obligations or other evidences of indebtedness pursuant to the provisions of this article, or upon any moneys, funds, revenues or other income held or received by the West Virginia disaster recovery board.


The board shall prepare and transmit to the Legislature annually as of the thirtieth day of June a report of its disaster recovery activities. The report shall include the number of requests for distributions, the number of distributions made and the amount of each distribution; a listing by source and amount of moneys, properties and assets that have been contributed to the recovery fund since the thirtieth day of June of the preceding year; the outstanding balance of the recovery fund; and an itemized list of any administrative costs incurred.
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.

To take effect July 1, 1990.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ............... this the ............... day of ............... .................., 1990.

Governor
PRESENTED TO THE
GOVERNOR
Date ...7/6/90
Time : 2:14/PM

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SECRETARY OF STATE