WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2005

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 3328

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

Passed April 8, 2005

In Effect from Passage
AN ACT to amend and reenact §15-5-1, §15-5-2, §15-5-3 and §15-5-13 of the Code of West Virginia, 1931, as amended, all relating to the Office of Emergency Services; changing the name of the Office of Emergency Services to the Division of Homeland Security and Emergency Management; transferring duties, functions, personnel and related entities; specifying qualifications of the Director; directing entities to coordinate and cooperate with the Secretary of the Department of Military Affairs and Public Safety as to the receipt of federal funds for homeland security and emergency services purposes; providing that the Governor may require certain reports from entities receiving services, equipment, supplies, materials or funds for homeland security and emergency services purposes; and requiring copies of reports to be furnished to the Legislature.
Be it enacted by the Legislature of West Virginia:

That §15-5-1, §15-5-2, §15-5-3 and §15-5-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.

§15-5-1. Policy and purpose.

In view of the existing and increasing possibility of the occurrence of disasters of unprecedented size and destructiveness, resulting from terrorism, enemy attack, sabotage or other hostile action, or from fire, flood, earthquakes or other natural or man-made 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 the Division of Homeland Security and Emergency Management and to authorize the creation of local and regional organizations for emergency services 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; (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 emergency services and homeland security functions; (4) and to establish and implement comprehensive homeland security and emergency management plans to deal with such disasters. It is further declared to be the purpose of this article and the policy of the state that all homeland security and emergency management funds and functions of this state be coordinated to the maximum extent with the Secretary of the Department of Military Affairs
and Public Safety and with the comparable functions of the federal government including its various departments and agencies, of other states and localities and of private agencies of every type, so that the most effective preparation and use may be made of the nation’s and this state’s manpower, resources and facilities for dealing with any disaster that may occur.


As used in this article:

(a) “Emergency services” means the preparation for and the carrying out of all emergency functions, other than functions for which military forces are primarily responsible, to protect, respond and recover, to prevent, detect, deter and mitigate, to minimize and repair injury and damage resulting from disasters or other event caused by flooding, terrorism, enemy attack, sabotage or other natural or other man-made causes. These functions include, without limitation, fire-fighting services, police services, medical and health 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 the health, safety and welfare of the citizens of this state, together with all other activities necessary or incidental to the preparation for and carrying out of the foregoing functions. Disaster includes the imminent threat of disaster as well as its occurrence and any power or authority exercisable on account of a disaster that may be exercised during the period when there is an imminent threat thereof;

(b) “Local organization for emergency services” means an organization created in accordance with the provisions of this
article by state or local authority to perform local emergency services function;

(c) "Mobile support unit" means an organization for emergency services 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 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 terrorist or man-made cause, including weapons of mass destruction, 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) “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 essential goods or service deemed by the authority to be necessary for recovery from a disaster;

(k) “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;

(l) “Recovery fund” means the West Virginia Disaster Recovery Trust Fund created by this article;

(m) “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

(n) “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 incidental or appurtenant thereto.

(o) “Secretary” means the Secretary of the West Virginia Department of Military Affairs and Public Safety.

(a) The Office of Emergency Services is continued as the Division of Homeland Security and Emergency Management within the Department of Military Affairs and Public Safety. All of the allied, advisory, affiliated or related entities and funds associated with the Office of Emergency Services and all its functions, personnel and property, are transferred to, incorporated in and administered as a part of the Division of Homeland Security and Emergency Management. Wherever the words “Office of Emergency Services” appear in this code, they shall mean the Division of Homeland Security and Emergency Management.

(b) A Director of the Division of Homeland Security and Emergency Management shall be appointed by the Governor, by and with the advice and consent of the Senate. The Governor shall consider applicants for Director who at a minimum: (1) have at least five years managerial or strategic planning experience; (2) are knowledgeable in matters relating to public safety, homeland security, emergency management and emergency response; and (3) have at a minimum, a federally issued secret level security clearance or have submitted to or will submit to a security clearance investigation for the purpose of obtaining, at a minimum, a federally issued secret level security clearance.

(c) The Director may employ such technical, clerical, stenographic and other personnel, fix their compensation and make expenditures within the appropriation to the Division or from other funds made available for the purpose of providing homeland security and emergency management services to carry out the purpose of this article. Employees of the Division of Homeland Security and Emergency Management shall be members of the State Civil Service System and all appointments of the office, except those required by law to be exempt, shall be a part of the classified service under the Civil Service System.
35 (d) The Director and other personnel of the Division of Homeland Security and Emergency Management 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.

40 (e) The Director, subject to the direction and control of the Governor through the Secretary of the Department of Military Affairs and Public Safety, shall be executive head of the Division of Homeland Security and Emergency Management and shall be responsible to the Governor and the Secretary of the Department of Military Affairs and Public Safety for carrying out the program for homeland security and emergency management in this state. The Director in consultation with the Secretary of the Department of Military Affairs and Public Safety shall coordinate the activities of all organizations for homeland security and emergency management within the state and maintain liaison with and cooperate with homeland security, emergency management and other emergency service and civil defense agencies and organizations of other states and of the federal government, and shall have additional authority, duties and responsibilities authorized by this article as may be prescribed by the Governor or the Secretary of the Department of Military Affairs and Public Safety.

58 (f) The Director shall have the power to acquire in the name of the state by purchase, lease or gift, real property and rights or easements necessary or convenient to construct thereon the necessary building or buildings for housing and homeland security and emergency management control center.

§15-5-13. Appropriations; acceptance of services, gifts, grants and loans.

1 (a) Each political subdivision shall have the power to make appropriations in the manner provided by law for making
appropriations for the ordinary expenses of such political subdivision for the payment of expenses of its local organization for emergency services or of its proportionate share of expenses of a regional organization for emergency services, or both.

(b) Whenever the federal government or any agency or officer thereof shall offer to any authority, corporation, partnership or other entity, public or private or the state, or through the state to any political subdivision thereof, services, equipment, supplies, materials or funds by way of gift, grant or loan, for purposes relating to homeland security or emergency services, the state, after consultation and in coordination with the Secretary and acting through the Governor, or a political subdivision after consultation and in coordination with the Secretary and acting with the consent of the Governor and through its executive officer or governing body, may accept the offer. Upon acceptance, the Governor of the state or executive officer or governing body of the political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive services, equipment, supplies, materials or funds on behalf of the state or the political subdivision and subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer.

(c) 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 relating to homeland security or emergency services, the state, after consultation and in coordination with the Secretary and acting through the Governor, or the political subdivision after consultation and in coordination with the Secretary and acting through its executive officer or governing body, may accept the offer. Upon acceptance, the Governor of the state or executive officer or governing body of the political subdivision may authorize any officer of the state or of the
political subdivision, as the case may be, to receive services, equipment, supplies, materials or funds on behalf of the state or the political subdivision and subject to the terms of the offer.

(e) The Governor may require any agency, authority, corporation, partnership or other entity to furnish a report, in both written and electronic form, detailing the source and receipt of all services, equipment, supplies, materials or funds for purposes relating to homeland security or emergency services as a condition of receiving these from the state. Within ten days of the receipt of any reports required under this subsection, the Governor shall furnish copies thereof to the Legislature.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 31st day of May, 2005.

Governor
PRESENTED TO THE GOVERNOR

MAY 2 2005

Time

[Signature]