WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2008

COMMITTEE SUBSTITUTE
FOR
ENROLLED
Senate Bill No. 634

(Senators Hunter, Helmick, Plymale, Minard, Kessler and Unger, original sponsors)

[Passed March 6, 2008; in effect from passage.]
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §15-1J-1, §15-1J-2, §15-1J-3, §15-1J-4 and §15-1J-5, all relating to the West Virginia Military Authority Act; authorizing the authority to administer programs and receive funds; and giving the authority certain powers and duties.
Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §15-lJ-1, §15-lJ-2, §15-lJ-3, §15-lJ-4 and §15-lJ-5, all to read as follows:

ARTICLE II. THE WEST VIRGINIA MILITARY AUTHORITY ACT.


This article shall be known and may be cited as the West Virginia Military Authority Act.

§15-lJ-2. Legislative findings.

The Legislature finds that the West Virginia National Guard is a unique entity that has a dual mission for both West Virginia and the United States. In this dual capacity, the West Virginia National Guard receives funds to administer programs, including the hiring of employees, that the federal government, including the Department of Defense, provides to the guard in support of specific activities for various federal agencies for national security and homeland security purposes. These programs fulfill specific agency purposes and necessarily require continued funding by the federal government.

Additionally, the guard continues to receive federal funding to develop and maintain capabilities to house, refurbish, rebuild and maintain military equipment and conduct other test and operational activities to support national and homeland security objectives. These activities require the guard to hire persons who will be compensated, in whole or in part, with federal funds. It
is further determined and declared that it is necessary for the guard to develop and implement a procedure for hiring and management of nonmilitary employees to support its specific missions.


As used in this article, unless the content clearly indicates otherwise:

(a) "Authority" means the West Virginia Military Authority.

(b) "BRIM" means the West Virginia Board of Risk Management.

(c) "Guard" means West Virginia National Guard, including its Army and Air components.

(d) "Employee" means any person who, within the at-will employment relationship, is hired, performs duties and is paid a wage or salary which cost is, in whole or in part, reimbursed by the federal government pursuant to a contract or memorandum of understanding between the federal government and the guard.

(e) "PEIA" means Public Employees Insurance Act.

(f) "PERS" means Public Employee's Retirement System.

§15-1J-4. Establishment and general powers of the authority.

(a) The West Virginia Military Authority is hereby
established to administer national security, homeland security and other military-related programs that provide for the reimbursement, in whole or in part, of employee wages or salaries pursuant to a contract or memorandum of understanding between the federal government and the guard. The authority to administer programs granted in this subsection shall terminate when federal funds are no longer available to provide reimbursement of salaries or wages.

(b) The authority will be administered by the Adjutant General and the Adjutant General’s department.

(c) Funds provided by the federal government and any state funds authorized by appropriation of the Legislature used as a required match to secure federal funding for programs administered by the authority pursuant to this section shall be administered by the Adjutant General subject to the provisions of article eleven, chapter four of this code.

(d) Except as otherwise prohibited by statute, the authority, as a governmental instrumentality exercising public powers of the state, shall have and may exercise all powers necessary or appropriate to carry out the purpose of this article, including the authority to:

(1) Execute cooperative agreements between the guard and the federal and/or state governments;

(2) Contract on behalf of the guard with the federal government, its instrumentalities and agencies, the state, its agencies and instrumentalities, municipalities, foreign governments, public bodies, private corporations, partnerships, associations and individuals;
(3) Use funds administered by the authority pursuant to subsection (c) of this section for the maintenance, construction or reconstruction of capital repair and replacement items as necessary and approved by the authority;

(4) Procure insurance with state funds through BRIM covering property and other assets of the authority in amounts and from insurers that BRIM determines necessary;

(5) Hire employees at an appropriate salary equivalent to a competitive wage rate;

(6) Enroll employees in PERS, PEIA and workers’ compensation and unemployment programs, or their equivalents: Provided, That the authority, through the receipt of federal and/or state funds, pays the required employer contributions;

(7) Cooperate with economic development agencies in efforts to promote the expansion of industrial, commercial and manufacturing in the state;

(8) Develop a human resources division that will administer and manage its employees and receive state matching funds as necessary to ensure maximum federal funds are secured;

(9) Due to the at-will employment relationship with the authority, its employees may not avail themselves of the state grievance procedure as set forth in article six-a, chapter twenty-nine of this code; and

(10) Have the ability to secure all other bonding,
insurance or other liability protections necessary for its employees to fulfill their duties and responsibilities.

§15-1J-5. Employees.

(a) The authority shall have the power to hire, administer and manage employees necessary to fulfill its responsibilities.

(1) All employees will be exempt from both the classified services category and the classified exempt services category as set forth in section four, article six, chapter twenty-nine of this code.

(2) Employee positions are contingent on the receipt of the necessary federal and/or state funds.

(3) Each employee hired shall be deemed an at-will employee who may be discharged or released from his or her respective position without cause or reason.

(4) Employees will participate in the PEIA, PERS and workers’ compensation and unemployment compensation programs, or their equivalents. Public safety-related positions will continue to require dual status membership as outlined in section twenty-six, article one-b, chapter fifteen of this code.

(b) The Adjutant General will set appropriate salary rates for employees equivalent to a competitive wage rate necessary to support a specific mission.

(c) Security guards and military firefighters hired by the authority under the provisions of this article will continue to have the same authority and must meet the
requirements as set forth in section twenty-two, article one-b, chapter fifteen of this code and section twenty-six of said article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Originated in the Senate.

In effect from passage.

The within was approved this the 20th Day of November, 2008.
PRESENTED TO THE
GOVERNOR

MAR 1 4 2008

Time __11:25 Am__