

SB 694

FILED

2009 MAY -4 PM 3: 19

WEST VIRGINIA LEGISLATURE WEST VIRGINIA
SECRETARY OF STATE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2009

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ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 694

(SENATORS KESSLER AND WHITE, *original sponsors*)

[Passed April 11, 2009; in effect from passage.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-5-28, relating to mutual aid agreements; establishing a statewide intrastate mutual aid system; setting forth legislative findings; authorizing the Director of the Division of Homeland Security and Emergency Management to propose a statewide mutual aid agreement; establishing procedures to allow local jurisdictions to elect not to participate; establishing procedures to amend the mutual aid agreement; creating a Statewide Intrastate Mutual Aid Committee; and establishing procedures for comment for changes to the agreement and the reenactment of the agreement.

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 section, designated §15-5-28, to read as follows:

**ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY
MANAGEMENT.**

§15-5-28. Statewide mutual aid system.

1 (a) The Legislature hereby finds that emergencies
2 transcend political jurisdictional boundaries and that
3 intergovernmental coordination is essential for the
4 protection of lives and property and for the best use of
5 available assets, both public and private. The purpose of
6 this section is to create a system of intrastate mutual aid
7 between participating political subdivisions in the state.
8 The system shall provide for mutual assistance among the
9 participating political subdivisions in the prevention of,
10 response to and recovery from any disaster that results in
11 a formal state of emergency in a participating political
12 subdivision, subject to that participating political subdivi-
13 sion's criteria for declaration. The system shall provide for
14 mutual cooperation among the participating subdivisions
15 in conducting disaster-related exercises, testing or other
16 training activities outside actual declared emergency
17 periods. This section provides no immunity, rights or
18 privileges for any individual responding to a state of
19 emergency that is not requested or authorized to respond
20 by a participating political subdivision. Participating
21 political subdivisions will be ensured, to the fullest extent
22 possible, eligibility for state and federal disaster funding.

23 (b) The Statewide Intrastate Mutual Aid Committee is
24 hereby created. The committee shall consist of eleven
25 members from various different public safety entities and
26 other governmental entities who shall be appointed by the
27 Governor. The Director of the Division of Homeland
28 Security and Emergency Management, or his or her
29 designee, shall chair the committee. This committee shall

30 be multidisciplinary and representative of emergency
31 management and response disciplines as well as local
32 government. It shall be the committee's responsibility to
33 hold, at a minimum, annual meetings to review the
34 progress and status of statewide mutual aid, assist in
35 developing methods to track and evaluate activation of the
36 system and to examine issues facing participating political
37 subdivisions regarding the implementation of this legisla-
38 tion. The committee may prepare an annual report on the
39 condition and effectiveness of mutual aid in the state,
40 make recommendations for correcting any deficiencies and
41 submit that report to the appropriate legislative commit-
42 tee or other governing body. Members of the committee
43 shall serve a maximum two-year term.

44 (c) Upon the enactment of this legislation, all political
45 subdivisions within the state are members of the statewide
46 mutual aid system: *Provided*, That a political subdivision
47 within the state may elect not to participate or to with-
48 draw from the system upon the enactment of an appropri-
49 ate resolution by its governing body declaring that it elects
50 not to participate in the statewide mutual aid system. A
51 copy of any such resolution shall be provided to the
52 Division of Homeland Security and Emergency Manage-
53 ment.

54 (d) This section does not preclude participating political
55 subdivisions from entering into supplementary agreements
56 with another political subdivision and does not affect any
57 other agreement to which a political subdivision may
58 currently be a party to, or decide to be a party to.

59 (e) "Emergency responder", as used in this article, shall
60 mean anyone with special skills, qualifications, training,
61 knowledge and experience in the public or private sectors
62 that would be beneficial to a participating political
63 subdivision in response to a locally declared emergency as
64 defined in any applicable law or ordinance or authorized

65 drill or exercises; and who is requested and authorized to
66 respond. Under this definition, an emergency responder
67 may be required to possess a license, certificate, permit or
68 other official recognition for his or her expertise in a
69 particular field or area of knowledge. An emergency
70 responder could include, but is in no way limited to, the
71 following: Law-enforcement officers, firefighters, emer-
72 gency medical services personnel, physicians, nurses, other
73 public health personnel, emergency management person-
74 nel, public works personnel, local emergency debris
75 removal teams, those persons with specialized equipment
76 operations skills or training or any other skills needed to
77 provide aid in a declared emergency.

78 (f) It shall be the responsibility of each participating
79 political subdivision with jurisdiction over and responsi-
80 bility for emergency management within that certain
81 subdivision to do all of the following:

82 (1) Identify potential hazards that could affect the
83 participant using an identification system common to all
84 participating jurisdictions.

85 (2) Conduct joint planning, intelligence sharing and
86 threat assessment development with contiguous partici-
87 pating political subdivisions, and conduct joint training at
88 least biennially.

89 (3) Identify and inventory the current services, equip-
90 ment, supplies, personnel and other resources related to
91 planning, prevention, mitigation, response and recovery
92 activities of the participating political subdivision.

93 (4) Adopt and implement the National Incident Manage-
94 ment System approved by the State of West Virginia.

95 (g) A participating political subdivision may request
96 assistance of other participating political subdivisions in
97 preventing, mitigating, responding to and recovering from

98 disasters that result in locally declared emergencies or in
99 concert with authorized drills or exercises as allowed
100 under this section. Requests for assistance shall be made
101 to the Division of Homeland Security and Emergency
102 Management through the designated county emergency
103 management director by the chief executive officer of a
104 participating political subdivision, or his or her designee
105 for response. Requests may be verbal or in writing. Verbal
106 requests will be followed up with a written request as soon
107 as is practical or such number of days as the state, in its
108 discretion, may dictate.

109 (h) The obligation of a participating political subdivision
110 to provide assistance in the prevention of, response to and
111 recovery from a locally declared emergency or in autho-
112 rized drills or exercises is subject to the following condi-
113 tions:

114 (1) A participating political subdivision requesting
115 assistance must have either declared a state of emergency
116 in the manner outlined in this section or authorized drills
117 and exercises;

118 (2) A responding participating political subdivision may
119 withhold resources to the extent necessary to provide
120 reasonable protection and services for its own jurisdiction;

121 (3) Emergency response personnel of a responding
122 participating political subdivision shall continue under the
123 command and control of their responding jurisdiction to
124 include medical protocols, standard operating procedures
125 and other protocols, but shall be under the operational
126 control of the appropriate officials within the National
127 Incident Management System of the participating political
128 subdivision receiving the assistance; and

129 (4) Assets and equipment of a responding participating
130 political subdivision shall continue under the control of
131 the responding jurisdiction, but shall be under the opera-

132 tional control of the appropriate officials within the
133 National Incident Management System of the participat-
134 ing political subdivision receiving the assistance.

135 (i) If a person or entity holds a license, certificate or
136 other permit issued by a participating political subdivision
137 or the state evidencing qualification in a professional,
138 mechanical or other skill and the assistance of that person
139 or entity is requested by a participating political subdivi-
140 sion, the person or entity shall be deemed to be licensed,
141 certified or permitted in the political subdivision request-
142 ing assistance for the duration of the declared emergency
143 or authorized drills or exercises and subject to any limita-
144 tions and conditions the chief executive of the participat-
145 ing political subdivision receiving the assistance may
146 prescribe by executive order or otherwise.

147 (j) (1) Any requesting political subdivision shall reim-
148 burse the participating political subdivision rendering aid
149 under this system and in accordance with procedures
150 developed by the Statewide Intrastate Mutual Aid Com-
151 mittee, provided the request for aid is authorized by the
152 Division of Homeland Security and Emergency Manage-
153 ment. A participating political subdivision providing
154 assistance may determine to donate assets of any kind to
155 a receiving participating political subdivision. Requests
156 for reimbursement shall be in accordance with procedures
157 developed by the Statewide Intrastate Mutual Aid Com-
158 mittee.

159 (2) Should a dispute arise between parties to the system
160 regarding reimbursement, involved parties will make
161 every effort to resolve the dispute within thirty days of
162 written notice of the dispute by the party asserting
163 noncompliance. In the event that the dispute is not re-
164 solved within ninety days of the notice of the claim, either
165 party may request the dispute be solved through arbitra-
166 tion. Any arbitration under this provision shall be con-

167 ducted under the commercial arbitration rules of the
168 American Arbitration Association.

169 (k) The Statewide Intrastate Mutual Aid Committee
170 shall develop comprehensive guidelines and procedures
171 that address, including, but not limited to, the following:
172 Projected or anticipated costs, checklists for requesting
173 and providing assistance, recordkeeping for all participat-
174 ing political subdivisions, reimbursement procedures and
175 other necessary implementation elements along with the
176 necessary forms for requests and other records document-
177 ing deployment and return of assets.

178 (l) Personnel of a participating political subdivision
179 responding to or rendering assistance for a request who
180 sustain injury or death in the course of, and arising out of,
181 their employment are entitled to all applicable benefits
182 normally available to personnel while performing their
183 duties for their employer. Responders shall receive any
184 additional state and federal benefits that may be available
185 to them for line-of-duty deaths.

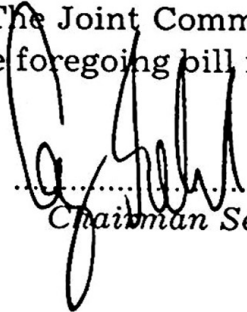
186 (m) All activities performed under this section are
187 deemed hereby to be governmental functions. For the
188 purposes of liability, all persons responding under the
189 operational control of the requesting political subdivision
190 are deemed to be employees of the requesting participating
191 political subdivision.

192 (n) Whenever the law-enforcement officials of any
193 political subdivision are rendering outside aid pursuant
194 their lawful authority, and with the approval of the
195 Director of the West Virginia Division of Homeland
196 Security and Emergency Management, and under the
197 authority of a state of emergency as officially proclaimed
198 by the Governor, such law-enforcement officials shall have
199 the same authority, powers, duties, rights, privileges and
200 immunities as if they were performing their law-enforce-
201 ment duties in the political subdivisions in which they are

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202 normally employed. The authority vested in the law-
203 enforcement official, in accordance with this section, shall
204 vest upon reporting in person to the Emergency Manage-
205 ment Agency official in charge and on duty at the county
206 or city of destination assignment. The law-enforcement
207 official shall act under the authority, supervision and
208 control of the highest ranking law-enforcement official
209 within the assigned outside jurisdiction. Law enforcement
210 and powers of arrest authority will not attach to the law-
211 enforcement official while in transit from his or her
212 jurisdiction of origin en route to his or her assigned
213 jurisdiction under intrastate mutual aid assistance.


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


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Chairman Senate Committee

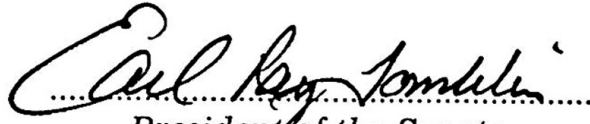

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Chairman House Committee

Originated in the Senate.

In effect from passage.


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Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


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Speaker House of Delegates

The within is appended this the 4th
May Day of, 2009.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAY 1 2009

Time 2:50 pm