

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Enrolled

Senate Bill 128

BY SENATORS SMITH, TARR, AZINGER, ROBERTS, DEEDS,

BOLEY, RUCKER, TAYLOR, KARNES, AND WOODRUM

[Passed February 23, 2023; in effect from passage]

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SB128

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1 AN ACT to amend and reenact §15-5-2 and §15-5-6 of the Code of West Virginia, 1931, as
2 amended, all relating to states of emergency and preparedness; defining terms; clarifying
3 the authority of the Governor and the Legislature to proclaim or declare states of
4 emergency and preparedness; creating two classes of states of preparedness and
5 establishing the criteria therefor; establishing the initial duration of gubernatorially
6 proclaimed states of emergency and preparedness and the requirements for extending
7 same; expanding and clarifying the powers of the Governor as to what he or she may
8 order under proclamations of states of emergency and preparedness; expressly limiting
9 the Governor's authority to order certain actions in an executive order issued pursuant to
10 a proclamation or declaration of a state of emergency or preparedness; clarifying that the
11 declaration of a state of preparedness has the same effect as a declaration of a state of
12 emergency for the purposes of the Emergency Management Assistance Compact and the
13 Statewide Mutual Aid System; and stating that the powers granted as to orders issued
14 under states of emergency do not include the authority to limit the lawful possession and
15 use of firearms and ammunitions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.

§15-5-2. Definitions.

1 As used in this article:

2 (1) "Board" means the West Virginia Disaster Recovery Board created by this article;

3 (2) "Code" means the Code of West Virginia, 1931, as amended;

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

8 (4) "Critical infrastructure" includes any systems and assets, whether physical or virtual,
9 so vital to the state that the incapacity or destruction of such systems and assets would have a
10 debilitating impact on security, state economic security, state public health or safety, or any
11 combination of those matters;

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

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

21 (7) "Emergency services" means the preparation for and the carrying out of all emergency
22 functions, other than functions for which military forces are primarily responsible, to protect,
23 respond, and recover, to prevent, detect, deter, and mitigate, to minimize and repair injury and
24 damage resulting from disasters or other event caused by flooding, terrorism, enemy attack,
25 sabotage, or other natural or other man-made causes. These functions include, without limitation,
26 critical infrastructure services, firefighting services, police services, medical and health services,
27 communications, emergency telecommunications, radiological, chemical, and other special
28 weapons defense, evacuation of persons from stricken areas, emergency welfare services,
29 emergency transportation, existing or properly assigned functions of plant protection, temporary
30 restoration of public utility services and other functions related to the health, safety, and welfare
31 of the citizens of this state, together with all other activities necessary or incidental to the
32 preparation for and carrying out of these functions. Disaster includes the imminent threat of

33 disaster as well as its occurrence and any power or authority exercisable on account of a disaster
34 that may be exercised during the period when there is an imminent threat;

35 (8) "Essential business activities" means a specific work or improvement within this state
36 or a specific item of equipment or tangible personal property used within this state by any person
37 to provide any essential goods or critical infrastructure services determined by the authority to be
38 necessary for continued operations during a disaster, state of emergency, or state of
39 preparedness, and for recovery from a disaster;

40 (9) "Local organization for emergency services" means an organization created in
41 accordance with the provisions of this article by state or local authority to perform local emergency
42 services function functions;

43 (10) "Mobile support unit" means an organization for emergency services created in
44 accordance with the provisions of this article by state or local authority to be dispatched by the
45 Governor to supplement local organizations for emergency services in a stricken area;

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

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

50 (13) "Recovery fund" means the West Virginia Disaster Recovery Trust Fund created by
51 this article;

52 (14) "Residential housing" means a specific work or improvement within this state
53 undertaken primarily to provide dwelling accommodations, including the acquisition, construction
54 or rehabilitation of land, buildings and improvements thereto, for residential housing, including,
55 but not limited to, facilities for temporary housing and emergency housing, and any other
56 nonhousing facilities that are incidental or appurtenant thereto;

57 (15) "Secretary" means the Secretary of the West Virginia Department of Military Affairs
58 and Homeland Security; and

59 (16) "State of emergency" means the duly proclaimed existence of conditions of disaster
60 or other serious threat to the health or safety of persons and property within West Virginia, or a
61 specific geographic area thereof, including, but not limited to, an attack upon the state or the
62 United States, a natural or man-made disaster of major proportions, a pandemic, or other large-
63 scale threat beyond the capacity of local control;

64 (17) "State of preparedness" means the duly proclaimed authorization for:

65 (A) Specialized planning and preparation activities intended to minimize the anticipated
66 effect of conditions constituting a state of emergency, as defined in this section, which, in the
67 judgment of the Governor, are expected to commence within the next 30 days, or within a period
68 of longer than 30 days if necessary to obtain funding or maintain compliance with federal or
69 interjurisdictional requirements: *Provided*, That a state of preparedness which is duly proclaimed
70 under such circumstances shall be referred to as a "Class I state of preparedness"; or

71 (B) Specialized planning and preparation activities intended to minimize, by use of any
72 available and appropriate federal or state governmental resources, the anticipated impact of or
73 anticipated threats caused by a planned or anticipated event of such large size or scope that it is
74 beyond the capacity of local control, and which is scheduled to commence within the next 30
75 days, or within a period of time longer than 30 days if necessary to obtain funding or maintain
76 compliance with federal or interjurisdictional requirements: *Provided*, That a state of preparedness
77 which is duly proclaimed under such circumstances shall be referred to as a "Class II state of
78 preparedness"; and

79 (18) "Temporary housing" means a specific work or improvement within this state
80 undertaken primarily to provide dwelling accommodations, including the acquisition, construction
81 or rehabilitation of land, buildings and improvements thereto, for temporary residential shelters or
82 housing for victims of a disaster and such other nonhousing facilities that are incidental or
83 appurtenant thereto.

§15-5-6. Proclamation of a state of emergency or state of preparedness by the Governor or the Legislature; additional powers of the Governor during a state of emergency or state of preparedness.

1 (a) The provisions of this section, and any executive order issued pursuant to the
2 provisions of this section, are operative only during the existence of a state of emergency or state
3 of preparedness: *Provided*, That nothing in this section or in any executive order issued hereunder
4 may be construed to suspend or supersede any provision of the United States Constitution or
5 West Virginia Constitution.

6 (b) The existence of a state of emergency may be proclaimed by the Governor by
7 executive order or by concurrent resolution of the Legislature if the Governor in the proclamation,
8 or the Legislature in the concurrent resolution, finds that conditions warranting the proclamation
9 of a state of emergency, as defined in this article, exist, and that the health, safety, and welfare
10 of the inhabitants of this state require an invocation of the provisions of this section: *Provided*,
11 That a gubernatorially proclaimed state of emergency expires 60 days after issuance of the
12 executive order unless, prior to the 60th day, the Legislature adopts a concurrent resolution
13 extending the state of emergency beyond 60 days. A concurrent resolution adopted by the
14 Legislature to extend a state of emergency proclaimed by the governor shall set forth within its
15 terms the length of time for which the state of emergency shall be extended. A state of emergency,
16 whether proclaimed by the Governor or by the Legislature, terminates upon the issuance of a
17 proclamation of termination by the Governor, or the passage by the Legislature of a concurrent
18 resolution terminating the state of emergency.

19 (c) The existence of a state of preparedness may be proclaimed by the Governor by
20 executive order or by concurrent resolution of the Legislature, if the Governor in the proclamation
21 or the Legislature in the resolution, finds that conditions warranting the proclamation of a state of
22 preparedness, as defined in this article, exist, and that the health, safety, and welfare of the
23 inhabitants of this state require the invocation of the provisions of this section: *Provided*, That the

24 Governor or the Legislature shall proclaim a state of preparedness as a "Class I state of
25 preparedness" or a "Class II state of preparedness", as defined in this article, by law: *Provided*
26 *however*, That a gubernatorially proclaimed Class I state of preparedness expires 30 days after
27 issuance of the executive order unless, prior to the 30th day, the Legislature adopts a concurrent
28 resolution extending the state of preparedness beyond 30 days. A concurrent resolution adopted
29 by the Legislature to extend a Class I state of preparedness proclaimed by the governor shall set
30 forth within its terms the length of time for which the state of preparedness shall be extended. A
31 Class II state of preparedness, whether proclaimed by the Governor or by the Legislature,
32 terminates upon the issuance of a proclamation of termination by the Governor, or the passage
33 by the Legislature of a concurrent resolution terminating the Class II state of preparedness.

34 (d) When a state of emergency follows a state of preparedness involving the same or
35 substantially similar circumstances, the total time allotted for the duration of the two combined
36 shall be no more than 90 days, unless the Governor follows the requirements for extending the
37 state of emergency under subsection (b) of this section.

38 (e) Any proclamation or concurrent resolution issued under this section shall include, in
39 general terms:

40 (1) A description of the facts and circumstances warranting the proclamation or concurrent
41 resolution; and

42 (2) A designation of the geographic area threatened.

43 (f) Any proclamation or resolution shall be disseminated as soon as practicable to the
44 news media and any other means which are calculated to bring its contents to the attention of the
45 general public: *Provided*, That for a gubernatorial proclamation of a state of emergency or state
46 of preparedness, the Governor shall provide a copy of the executive order to the President of the
47 Senate, the Speaker of the House of Delegates, and the Joint Committee on Government and
48 Finance.

49 (g) Under a duly proclaimed state of emergency or state of preparedness, the Governor
50 has the following additional powers which are intended to be construed to authorize actions which
51 are consistent with constitutional or statutory law, or with final orders of those courts of competent
52 jurisdiction to which the Governor is subject:

53 (1) To enforce all laws and rules relating to the provision of emergency services and to
54 assume direct operational control of any or all emergency service entities and personnel in the
55 state;

56 (2) To sell, lend, lease, give, or transfer property, to make purchases, deliver materials or
57 perform functions relating to emergency services on terms and conditions he or she prescribes
58 without regard to the limitations of any existing law or being required to account to the State
59 Treasurer for any funds received for the property;

60 (3) To procure materials and facilities for emergency services by purchase, condemnation
61 under the provisions of §54-1-1 *et seq.* of this code, or seizure pending institution of condemnation
62 proceedings within 30 days from the seizing thereof and to construct, lease, transport, store,
63 maintain, renovate, or distribute the materials and facilities. Compensation for the procured
64 property shall be made in the manner provided in §54-1-1 *et seq.* of this code;

65 (4) To obtain the services of necessary personnel required during the emergency or in
66 preparation for the emergency, and to compensate such personnel for their services from the
67 Governor's Contingent Fund or other funds available to him or her;

68 (5) To provide and compel the evacuation of all or part of the population from any stricken
69 or threatened area within the state and to take steps that are necessary for the receipt and care
70 of the evacuees;

71 (6) To control ingress and egress into or out of a disaster area or other area subject to a
72 state of emergency or state of preparedness, as well as the movement of persons and occupancy
73 of premises within the area;

74 (7) To suspend the provisions of any statute prescribing the procedures for the conduct of
75 state business or the orders, or rules of any state agency, if strict compliance therewith would in
76 any way prevent, hinder, or delay necessary action in coping with the emergency: *Provided*, That
77 nothing in this subdivision may be construed as granting the Governor the power to suspend any
78 provision of this section;

79 (8) To use available resources of the state and of its political subdivisions that are
80 reasonably necessary to cope with the emergency or to prepare for the emergency;

81 (9) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages,
82 explosives, and combustibles: *Provided*, That explosives and combustibles do not include
83 firearms, ammunition, components of ammunition, or ammunition-reloading equipment and
84 supplies;

85 (10) To make provision for the availability and use of temporary emergency housing; and

86 (11) To perform and exercise other functions, powers and duties that are necessary to
87 promote and secure the safety and protection of the civilian population.

88 (h) The declaration of a state of preparedness has the same effect as a declaration of a
89 state of emergency for the purposes of the Emergency Management Assistance Compact
90 established in §15-5-22 of this code, and the Statewide Mutual Aid System set forth in §15-5-28
91 of this code.

92 (i) The powers granted under this section do not authorize any action that would violate
93 the prohibitions of §15-5-19a of this code.

94 (j) During any state of preparedness or state of emergency proclaimed at any time, an
95 executive order of the Governor may not:

96 (1) Close churches or other houses of worship or prevent their operation in any manner
97 that is more restrictive than the least restrictive provisions in place for the operation of the most
98 essential facilities of government or private enterprise.

99 (2) Suspend or limit the lawful sale, lawful transfer, or lawful transportation of firearms,
100 ammunition, components of ammunition, or ammunition-reloading equipment and supplies; or

101 (3) Except as authorized by the provisions of this article, interfere with, or impair the
102 operation of the news media.

103 (k) Unless expressly authorized by an executive order of the Governor, a municipal,
104 county, or state health officer, under color of a duly proclaimed state of emergency or state of
105 preparedness, shall not take any enforcement action which is not authorized by statute.

106 (l) Any suit filed challenging an executive order issued relating to a state of preparedness
107 or emergency pursuant to the authority granted in this section shall be limited to a petition for a
108 writ of prohibition or mandamus pursuant to Rule 16 of the Rules of the West Virginia Supreme
109 Court of Appeals. The provisions of §55-17-3 of this code are not applicable to any suit filed
110 challenging an executive order issued pursuant to this section.

The Clerk of the Senate and the Clerk of the House of Delegates hereby certify that the foregoing bill is correctly enrolled.

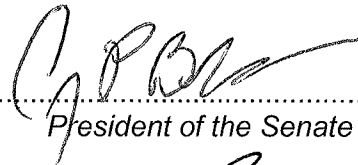

Clerk of the Senate


Clerk of the House of Delegates

OFFICE OF THE CLERK OF THE SENATE
2023 MAR -6 A 9:10
FILED

Originated in the Senate.

In effect from passage.


President of the Senate


Speaker of the House of Delegates

The within is this the
Day of, 2023.

.....
Governor

PRESENTED TO THE GOVERNOR

FEB 27 2023

Time 4:00 pm