

# WEST VIRGINIA LEGISLATURE

## 2023 REGULAR SESSION

### ENROLLED

### Committee Substitute

### for

## Senate Bill 677

BY SENATORS SWOPE AND RUCKER

[Passed March 11, 2023; in effect from passage]

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

2023 MAR 29 P 1:23

FILED

SB 677

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1 AN ACT to amend and reenact §15-5-2 of the Code of West Virginia, 1931, as amended; to repeal  
2 §15-5-4b, §15-5-4c, §15-5-24, §15-5-25, and §15-5-26 of said code; to amend and reenact  
3 §29-31-1, §29-31-2 and §29-31-3 of said code; to amend said code by adding thereto 10  
4 new sections, designated §29-31-2a, §29-31-6, §29-31-7, §29-31-8, §29-31-9, §29-31-10,  
5 §29-31-11, §29-31-12, §29-31-13 and §29-31-14, all relating generally to the Resiliency  
6 and Flood Protection Planning Act; modifying definitions; repealing, continuing, and  
7 moving provisions governing the West Virginia Disaster Recovery Trust Fund into the act;  
8 revising provisions governing the State Resiliency Office, the State Resiliency Officer, and  
9 the State Resiliency Board within the act; expanding upon the qualifications, powers, and  
10 duties of the State Resiliency Officer and the Deputy State Resiliency Officer, including,  
11 but not limited to, requiring a vulnerability assessment of critical infrastructure at the state  
12 and municipal levels including hospitals, schools, fire stations, and comparable facilities;  
13 requiring leadership in state planning efforts "in the event of" states of emergency;  
14 requiring development of new state Flood Resiliency Plan; providing for receipt and  
15 disbursement of funds from the West Virginia Disaster Recovery Trust Fund and the duties  
16 of the State Resiliency Officer in administering the same; creating the West Virginia Flood  
17 Resiliency Trust Fund; providing for receipt and disbursement of funds from the West  
18 Virginia Flood Resiliency Trust Fund and the duties of the State Resiliency Officer in  
19 administering the same; and providing tax exemption.

*Be it enacted by the Legislature of West Virginia:*

## **CHAPTER 15. PUBLIC SAFETY.**

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

#### **§15-5-2. Definitions.**

1 As used in this article:

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

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

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

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

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

20 "Emergency services" means the preparation for and the carrying out of all emergency  
21 functions, other than functions for which military forces are primarily responsible, to protect,  
22 respond, and to prevent, detect, deter, and mitigate, to minimize and repair injury and damage  
23 resulting from disasters or other events caused by flooding, terrorism, enemy attack, sabotage,  
24 or other natural or other man-made causes. These functions include, without limitation, critical  
25 infrastructure services, firefighting services, police services, medical and health services,  
26 communications, emergency telecommunications, radiological, chemical, and other special  
27 weapons defense, evacuation of persons from stricken areas, emergency welfare services,  
28 emergency transportation, existing or properly assigned functions of plant protection, temporary

29 restoration of public utility services and other functions related to the health, safety, and welfare  
30 of the citizens of this state, together with all other activities necessary or incidental to the  
31 preparation for and carrying out of these functions. Disaster includes the imminent threat of  
32 disaster as well as its occurrence and any power or authority exercisable on account of a disaster  
33 that may be exercised during the period when there is an imminent threat;

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

39 "Essential workers" means employees or contractors that fall under the definition of  
40 essential business activities during a disaster, state of emergency, or state of preparedness.

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

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

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

50 "Political subdivision" means any county or municipal corporation in this state;

51 "Residential housing" means a specific work or improvement within this state undertaken  
52 primarily to provide dwelling accommodations, including the acquisition, construction or  
53 rehabilitation of land, buildings and improvements thereto, for residential housing, including, but

54 not limited to, facilities for temporary housing and emergency housing, and any other nonhousing  
55 facilities that are incidental or appurtenant thereto;

56 "Secretary" means the Secretary of the West Virginia Department of Homeland Security;  
57 and

58 "Temporary housing" means a specific work or improvement within this state undertaken  
59 primarily to provide dwelling accommodations, including the acquisition, construction or  
60 rehabilitation of land, buildings and improvements thereto, for temporary residential shelters or  
61 housing for victims of a disaster, and such other nonhousing facilities that are incidental or  
62 appurtenant thereto.

**§15-5-4b. West Virginia Disaster Recovery Trust Fund disbursement.**

1 [Repealed.]

**§15-5-4c. Powers and duties related to the West Virginia Disaster Recovery Trust Fund.**

1 [Repealed.]

**§15-5-24. Disaster Recovery Trust Fund; disbursement of funds.**

1 [Repealed.]

**§15-5-25. Prohibition on funds inuring to the benefit of or being distributable to members,  
officers or private persons.**

1 [Repealed.]

**§15-5-26. Tax exemption.**

1 [Repealed.]

**CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

**ARTICLE 31. STATE RESILIENCY AND FLOOD PROTECTION PLANNING ACT.**

**§29-31-1. Short title; legislative findings; purpose.**

1 (a) This article may be known and cited as the "Resiliency and Flood Protection Planning  
2 Act".

3 (b) The West Virginia Legislature finds that:

4 (1) Flooding has affected each of the 55 counties and 32 major watersheds within the  
5 state;

6 (2) Over the past 52 years, more than 282 West Virginians have died in floods;

7 (3) Between January 1996 and January 2017, there were 27 federal disaster declarations  
8 in West Virginia involving flooding;

9 (4) Between January 2010 and December 2021, West Virginia was impacted by more than  
10 1,600 separate flood events;

11 (5) In June 2016, much of West Virginia suffered devastating flooding; and

12 (6) Despite the many state and federal flood protection programs and projects, flooding  
13 continues to be West Virginia's most common and widespread natural disaster.

14 (c) It is the purpose of this article to:

15 (1) Provide a comprehensive and coordinated statewide resiliency and flood protection  
16 planning program to save lives, and develop community and economic resiliency plans including,  
17 but not limited to, reducing or mitigating flood damage while supporting economic growth and  
18 protecting the environment; and

19 (2) Provide for funding mechanisms to implement such state and community plans  
20 developed through the program.

**§29-31-2. State resiliency office, officer, deputy, and board.**

1 (a) It is determined that a state authority is required to provide a coordinated effort and  
2 planning for disaster recovery and resiliency between government agencies, first responders, and  
3 all other entities to reduce the loss of life and property, lessen the impact of future disasters, ,  
4 protect property and the environment, meet basic human needs, and provide economic growth  
5 and resilience prior to and in the aftermath of an incident. Therefore, the State Resiliency Office  
6 is hereby created. The office shall be organized within the Office of the Governor. The office will  
7 serve as the recipient of disaster recovery and resiliency funds, excluding federal Stafford Act

8 funds, and the coordinating agency of recovery and resiliency efforts, including matching funds  
9 for other disaster recovery programs, excluding those funds and efforts under the direct control  
10 of the State Resiliency Officer pursuant to § 29-31-3, §29-31-6, §29-31-7 and §29-31-8 of this  
11 code.

12 (b)(1) The State Resiliency Office Board is also established and shall consist of the  
13 following members: The State Resiliency Officer; the Secretary of the Department of Commerce  
14 or his or her designee; the Director of the Division of Natural Resources or his or her designee;  
15 the Secretary of the Department of Environmental Protection or his or her designee; the Executive  
16 Director of the State Conservation Agency or his or her designee; the President of the West  
17 Virginia Emergency Management Council or his or her designee; the Secretary of the Department  
18 of Health and Human Resources or his or her designee; the Secretary of the Department of  
19 Homeland Security or his or her designee; the Secretary of Transportation or his or her designee;  
20 the Adjutant General of the West Virginia National Guard or his or her designee; the Director of  
21 the Division of Emergency Management within the Department of Homeland Security or his or  
22 her designee; two nonvoting members of the West Virginia Senate, one from each party, to be  
23 appointed by the President of the Senate; and two nonvoting members of the West Virginia House  
24 of Delegates, one from each party, to be appointed by the Speaker of the House of Delegates.

25 (2) A member of the board holds office so long as he or she retains the office or position  
26 by virtue of which he or she is serving on the board. A majority of the voting members of the board  
27 is a quorum and the concurrence of a board in any matter within their duties is required for its  
28 determination. The members of the board may not receive compensation for their services on the  
29 committee, but are entitled to reimbursement of expenses, including traveling expenses  
30 necessarily incurred in the discharge of their duties on the board.

31 (3) The board shall:

32 (A) Provide for the keeping of a full and accurate record of all proceedings and of all  
33 resolutions, rules, and orders issued or adopted, and of its other official actions;

34 (B) Shall adopt a seal, which shall be judicially noticed;

35 (C) Provide for an annual audit of the accounts of receipts and disbursements of the State  
36 Resiliency Office; and

37 (D) Perform those acts necessary for the execution of its functions under this article.

38 (1) The State Resiliency Officer shall be the chair of the State Resiliency Office Board and  
39 shall be appointed by the Governor with the advice and consent of the Senate. The State  
40 Resiliency Officer may cast a vote only in the event of a tie vote. The board shall elect from its  
41 voting membership a vice chair. The vice chair shall preside over the meetings of the board in the  
42 absence of the chair. In the absence of both the chair and the vice chair any member designated  
43 by the members present may act as chair.

44 (2) The State Resiliency Officer shall be vested with the authority and duties prescribed to  
45 the office within this article.

46 (3) The State Resiliency Officer shall be a person who has:

47 (A) At least five years' managerial or strategic planning experience in matters relating to  
48 flood control, hazard mitigation, and disaster resiliency, or alternatively, in disaster recovery,  
49 emergency management, community and economic development, regional planning, economics,  
50 or related public policy field;

51 (B) At least a level IS-800 NIMS certification: *Provided*, That if the State Resiliency Officer  
52 does not have a level IS-800 NIMS certification when appointed, he or she shall become so  
53 certified within one year following appointment; and

54 (C) Be thoroughly knowledgeable in matters relating to flood control, hazard mitigation,  
55 and disaster resiliency, or alternatively, in matters relating to disaster recovery, emergency  
56 management, community and economic development, regional planning, economics, or related  
57 public policy field.

58 (4) The State Resiliency Officer shall employ a deputy who shall assist the State Resiliency  
59 Officer in carrying out the duties of the office. The State Resiliency Office Board shall meet and

60 submit a list of no more than five nor less than two of the most qualified persons to the Governor  
61 within 90 days of the occurrence of a vacancy in this deputy position. This deputy shall be  
62 appointed by the Governor with the advice and consent of the Senate. Applicants for the deputy  
63 position shall at a minimum:

64 (A) Have at least three years' managerial or strategic planning experience in matters  
65 relating to flood control, hazard mitigation, and disaster resiliency, or alternatively, in disaster  
66 recovery, emergency management, community and economic development, regional planning,  
67 economics, or related public policy field;

68 (B) Have at least a level IS 800 NIMS certification: *Provided*, That if the deputy State  
69 Resiliency Officer does not have a level IS 800 NIMS certification when appointed, he or she shall  
70 become so certified within one year following appointment; and

71 (C) Be thoroughly knowledgeable in matters relating to flood control, hazard mitigation,  
72 and disaster resiliency, or alternatively, in matters relating to disaster recovery, emergency  
73 management, community and economic development, regional planning, economics, or related  
74 public policy field.

75 (5) The State Resiliency Officer shall employ additional staff as necessary to assist the  
76 State Resiliency Officer in carrying out the duties of the office.

77 (d) The board shall meet no less than once each calendar quarter at the time and place  
78 designated by the chair and the board shall work together with the State Resiliency Officer to fulfill  
79 the mission given to the State Resiliency Office to coordinate efforts for disaster planning,  
80 recovery, and resiliency between government agencies, first responders and others.

81 The board will assist and advise the State Resiliency Officer in developing policies to  
82 accomplish, at a minimum, the following specific tasks in order to achieve these goals, and will  
83 assist the State Resiliency Officer in devising plans and developing procedures which will ensure  
84 that agencies and political subdivisions of the state carry out these following specific tasks:

85           (1) Establish mechanisms to coordinate disaster recovery and resiliency-related programs  
86 and activities among state agencies and to encourage intergovernmental as well as cross-sector  
87 coordination and collaboration;

88           (2) Evaluate the state's role in construction permitting process and identify opportunities  
89 to expedite the permitting process post-disaster and for selected types of mitigation and  
90 adaptation actions;

91           (3) Conduct a review of laws and regulations to identify those that create or add to risk, or  
92 interfere with the ability to reduce risk or to improve disaster recovery and resiliency;

93           (4) Conduct an inventory of relevant critical planned activity by state agencies to determine  
94 their proposed impact upon disaster recovery and resiliency;

95           (5) Make recommendations regarding practical steps that can be taken to improve  
96 efficiencies, and to pool and leverage resources to improve disaster recovery and resiliency;

97           (6) Identify, prioritize, and evaluate issues affecting implementation of mitigation and  
98 adaptation actions, including, but not limited to, the effect of increasing flood risk in context of  
99 zoning and other land use regulations, possible conflicts between public hazard  
100 mitigation/adaptation planning and private property interests (e.g. buy-out programs, projects to  
101 increase flood storage), develop guidance for cities and towns, real estate professionals, property  
102 owners under existing law and regulations; and develop proposals for changes in laws, policies,  
103 and regulations, as needed;

104           (7) Ensure all counties and municipalities are covered by up-to-date Hazard Mitigation  
105 Plans and Local Comprehensive Disaster Plans that are consistent with, and coordinated to, the  
106 state's Hazard Mitigation Plans Comprehensive Disaster Plans, and the state's Flood Resiliency  
107 Plan; including, but not limited to, assisting them in developing planning guidance for cities and  
108 towns to complete and/or update Hazard Mitigation Plans; providing technical assistance to help  
109 counties and municipalities meet these standards; and provide notice to counties and

110 municipalities of funding opportunities to implement projects outlined in their Hazard Mitigation  
111 Plans;

112 (8) Conduct risk assessments, including, but not limited to, examining state highway  
113 corridors and associated drainage systems for stormwater inundation, impacts of downed trees,  
114 effects on utilities, and comparable facilities; assessment of known stormwater impacts between  
115 state highways and municipal drainage systems, options to eliminate or mitigate such impact; a  
116 housing vulnerability assessment for structures in riparian zones; a vulnerability assessment of  
117 critical infrastructure at the state and municipal levels including hospitals, schools, fire stations,  
118 and comparable facilities, and a vulnerability assessment of the state's historic and cultural  
119 resources;

120 (9) Establish working groups that will conduct assessments for varied sectors of the  
121 economy, such as small business, ports and river traffic, agriculture, manufacturing, and tourism;  
122 these assessments should address vulnerabilities and economic impacts, options to mitigate  
123 impacts, options to improve preparedness, response and recovery, and economic opportunities  
124 associated with design, engineering, technological and other skills and capabilities that can  
125 improve resilience;

126 (10) Establish emergency permitting procedures to expedite issuance of state permits  
127 following disasters, and develop guidance (model procedures) for political subdivisions to follow;  
128 and

129 (11) Lead long-term recovery planning efforts on behalf of the state in the event of the  
130 proclamation of the existence of a state of emergency due to a natural hazards event, or upon a  
131 Presidential declaration of a major disaster under Section 406 of the Stafford Act.

132 All decisions of the board shall be decided by a majority vote of the members.

133 (e) The State Resiliency Office shall provide adequate staff from that office to ensure the  
134 meetings of the board are facilitated, board meeting minutes are taken, records and  
135 correspondence kept, and that reports of the board are produced in a timely manner.

136 (f) Notwithstanding any other provisions of this code:

137 (1) The meetings of the board are not subject to the provisions of §6-9A-1 *et seq.* of this  
138 code.

139 (2) The following are exempt from public disclosure under the provisions of §29B-1-1 *et*  
140 *seq.* of this code:

141 (A) All deliberations of the board;

142 (B) The materials, in any medium, including hard copy and electronic, placed in the  
143 custody of the board as a result of any of its duties; and

144 (C) All records of the board, in the possession of the board, and generated by the board,  
145 due to their falling under several exceptions to public disclosure including, but not limited to, that  
146 for security or disaster recovery plans and risk assessments.

**§29-31-2a. Definitions.**

1 As used in this article:

2 "Board" means the West Virginia State Resiliency Office Board created by this article;

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

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

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

13 "Disaster recovery activities" means activities undertaken following a disaster to provide,  
14 or to participate in, the provision of long-term rehabilitation of infrastructure, housing, community  
15 facilities, and economic activity impacted by a disaster event;

16 "Flood Fund" means the West Virginia Flood Resiliency Trust Fund created by this article;

17 "Flood prevention or protection study" means the conduct of a hydraulic or hydrologic  
18 study of a flood plain with historic and predicted future floods, the assessment of current and  
19 projected future flood risk, and the development of strategies to prevent or mitigate damage from  
20 flash or riverine flooding;

21 "Flood resiliency" means efforts and activities intended to minimize damages during times  
22 of flooding resulting in reduced risk to people and infrastructure, and ensuring there is ample room  
23 for flooding and river adjustment to occur where the opportunity may exist;

24 "Low-income geographic area" means any locality, or community within a locality, that has  
25 a median household income that is not greater than 80 percent of the local median household  
26 income, or any area in the state designated as a qualified opportunity zone by the U.S. Secretary  
27 of the Treasury via his delegation of authority to the Internal Revenue Service;

28 "Low-income household" means any household whose income does not exceed 80  
29 percent of the local median household income;

30 "Nature-based solution" means sustainable planning, design, environmental  
31 management, and engineering practices that weave natural features or processes into the built  
32 environment to promote flood resiliency and preserve or enhance natural hydrologic function;

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

36 "Political subdivision" means any county or municipal corporation in this state;

37 "Recovery Trust Fund" means the West Virginia Disaster Recovery Trust Fund created by  
38 this article; and,

39 "Stafford Act" means the Robert T. Stafford Disaster Relief and Emergency Assistance  
40 Act (42 U.S.C. Chapter 68).

**§29-31-3. Authority of State Resiliency Office and State Resiliency Officer.**

1 The State Resiliency Office will coordinate the state's disaster recovery and resiliency  
2 missions and the State Resiliency Officer serves as the primary representative of the Governor in  
3 these matters. The State Resiliency Officer shall, upon the order and direction of the Governor,  
4 act on behalf of the Governor in the event of the proclamation of the existence of a state of  
5 emergency or state of preparedness due to a natural hazards event or upon a Presidential  
6 declaration of a major disaster under Section 406 of the Stafford Act. The State Resiliency Officer  
7 will assist and advise the Governor on all disaster recovery and resiliency issues and serve as a  
8 liaison between the Governor's office, and all other parties, whether state, federal, public, or  
9 private to further the purposes of this article. The State Resiliency Officer will:

10 (1) Serve as coordinator of all economic and community resiliency planning and  
11 implementation efforts, including, but not limited to, flood protection programs and activities in the  
12 state;

13 (2) Develop a new state Flood Resiliency Plan due to the Board no later than June 30,  
14 2024;

15 (3) Coordinate an annual review of the state Flood Resiliency Plan and update the plan  
16 no less than biennially, with updates due to the board no later than June 30 in even-numbered  
17 years;

18 (4) Recommend legislation to reduce or mitigate flood damage;

19 (5) Report to the Joint Legislative Committee on Flooding at least quarterly;

20 (6) Catalog, maintain, and monitor a listing of current and proposed capital expenditures  
21 to reduce or mitigate flood damage and other hazards, and other useful and desirable resiliency  
22 efforts;

23 (7) Coordinate planning of flood projects with federal agencies;

- 24 (8) Improve professional management of flood plains;
- 25 (9) Provide education and outreach on flooding issues to the citizens of this state;
- 26 (10) Establish a single website integrating all agency flood information;
- 27 (11) Monitor federal funds and initiatives that become available for disaster recovery and
- 28 economic and community resiliency or other flood or hazard mitigation, and to direct expenditures
- 29 on behalf of the Governor;
- 30 (12) Pursue additional funds and resources to assist not only with long-term recovery
- 31 efforts but also long-term community and statewide resiliency efforts;
- 32 (13) Coordinate, integrate, and expand planning efforts in the state for hazard mitigation,
- 33 long-term disaster recovery, and economic diversification;
- 34 (14) Coordinate long-term disaster recovery efforts in response to disasters as they occur;
- 35 (15) Establish and facilitate regular communication between federal, state, local, and
- 36 private sector agencies, and organizations to further economic and disaster resilience;
- 37 (16) Receive resources, monetary or otherwise, from any other governmental entity and
- 38 disburse those resources to effectuate the purposes of this article;
- 39 (17) Execute cooperative agreements, where appropriate, between the State Resiliency
- 40 Office and the federal and/or state governments;
- 41 (18) Contract, where appropriate, on behalf of the State Resiliency Office, with the federal
- 42 government, its instrumentalities and agencies, any state, territory or the District of Columbia, and
- 43 its agencies and instrumentalities, municipalities, foreign governments, public bodies, private
- 44 corporations, partnerships, associations, and individuals;
- 45 (19) Use funds administered by the State Resiliency Office for the maintenance,
- 46 construction, or reconstruction of capital repair and replacement items as necessary to effectuate
- 47 the purposes of this article;
- 48 (20) Accept and use funds from the federal government, its instrumentalities and
- 49 agencies, any state, territory or the District of Columbia, and its agencies and instrumentalities,

50 municipalities, foreign governments, public bodies, private corporations, partnerships,  
51 associations, and individuals for the purposes of disaster recovery, hazard mitigation, flood  
52 mitigation, flood prevention, and disaster response programs;

53 (21) Hire necessary employees at an appropriate salary equivalent to a competitive wage  
54 rate;

55 (22) Enroll appropriate employees in PERS, PEIA, and workers' compensation and  
56 unemployment programs, or their equivalents: *Provided*, That the State Resiliency Office, through  
57 the receipt of federal and/or state funds, pays the required employer contributions;

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

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

62 (25) Have the ability to draw upon other departments, divisions, agencies, and all other  
63 subdivisions of the state for research and input in fulfilling the requirements of this article, and its  
64 requests are to have priority over other such requests;

65 (26) Participate in the interdepartmental transfer of permanent state employees, as if he  
66 or she were a department secretary, under the provisions of §5F-2-7 of this code.

67 (27) Notwithstanding any other provision of this code to the contrary, acquire legal  
68 services that are necessary, including representation of the board, its employees, and officers  
69 before any court or administrative body from the office of the Attorney General, who shall provide  
70 such legal assistance and representation, and

71 (28) Take all other actions necessary and proper to effectuate the purposes of this article.

72 The office shall have any other additional authority, duties, and responsibilities as  
73 prescribed by the Governor to effectuate the purposes of this article. Due to the at-will employment  
74 relationship with the office, its employees may not avail themselves of the state grievance  
75 procedure as set forth in §6C-2-1 *et seq.* of this code.

**§29-31-6. West Virginia Disaster Recovery Trust Fund.**

1 (a) There is hereby created a special trust fund which shall be designated and known as  
2 the West Virginia Disaster Recovery Trust Fund to be administered by the State Resiliency  
3 Officer. The recovery fund shall consist of: (1) Any appropriations, grants, gifts, contributions, or  
4 revenues received by the recovery fund from any source, public or private; and (2) all income  
5 earned on moneys, properties, and assets held in the Recovery Fund. When any funds are  
6 received by the State Resiliency Officer from any source for the purpose of disaster recovery,  
7 they shall be paid into the Recovery Fund, and shall be disbursed and otherwise managed in the  
8 manner set forth in this article unless such a transfer is not allowable by law. The Recovery Fund  
9 shall be treated by the Auditor and Treasurer as a special revenue fund and not as part of the  
10 general revenues of the state.

11 (b) All moneys, properties, and assets acquired by the State of West Virginia in the  
12 Disaster Recovery Trust Fund shall be held by it in trust for the purposes of carrying out its powers  
13 and duties and shall be used and reused in accordance with the purposes and provisions of this  
14 article. Such moneys, properties, and assets shall at no time be commingled with other public  
15 funds except as authorized for investment under §29-31-8 of this code. Disbursements from the  
16 Recovery Fund shall be made only upon the written requisition of the State Resiliency Officer as  
17 set forth in §29-31-7 and §29-31-8 of this code. If no need exists for immediate use or  
18 disbursement, moneys, properties, and assets in the Recovery Fund shall be invested or  
19 reinvested by the State Resiliency Officer as provided in this article.

**§29-31-7. West Virginia Disaster Recovery Trust Fund disbursement.**

1 Upon the proclamation of the existence of a state of emergency due to a natural hazards  
2 event under the provisions of §15-5-6 of this code or upon a Presidential declaration of a major  
3 disaster under Section 406 of the Stafford Act, the State Resiliency Officer shall have the power  
4 to disburse funds from the Disaster Recovery Trust Fund created pursuant to §29-31-6 of this  
5 code to any person, political subdivision, or local organization for emergency services in such

6 amounts and in such manner, and to take such other actions, as the State Resiliency Officer may  
7 determine is necessary or appropriate in order to provide assistance to any person, political  
8 subdivision, or local organization for recovering from the disaster, or otherwise involved in disaster  
9 recovery activities: *Provided*, That except as provided hereafter in this section, requisitions for  
10 payment shall not be made or authorized for payment by the Auditor without the express approval  
11 of the State Resiliency Officer: *Provided, however*, That all disbursements arising out of the  
12 events surrounding the aftermath of a disaster event giving rise to the relevant disbursements  
13 shall require the express approval of the State Resiliency Officer, which approval shall not be  
14 unduly withheld or delayed.

15 In the occurrence of a qualifying event granting the State Resiliency Officer the power to  
16 disburse funds from the Disaster Recovery Trust Fund, the following provisions and conditions  
17 shall be adhered to:

18 (1) Disbursements shall be prioritized to the benefit of low-income households and  
19 geographic areas, and not less than 50 percent of all funds disbursed through the Disaster  
20 Recovery Trust Fund following any particular disaster event shall be disbursed to the benefit of  
21 low-income geographic areas, low-income households, or to local organizations conducting  
22 disaster recovery activities to the benefit of low-income geographic areas or low-income  
23 households;

24 (2) Disbursements to the benefit of a political subdivision may only be allowed upon the  
25 verification to the State Resiliency Officer that the recipient political subdivision has adopted, or  
26 will adopt within 24 months, the following programs or measures or risk forfeiture of future funding  
27 opportunities:

28 (A) Town road and bridge standards consistent with or exceeding those listed under the  
29 most current version of standards published by the West Virginia Department of Transportation;

30 (B) A flood hazard bylaw, or an adopted interim flood hazard bylaw as an intermediary  
31 step to secure enrollment and participation in the National Flood Insurance Program (NFIP), if  
32 applicable;

33 (C) A local Hazard Mitigation Plan that meets the provisions of 44 CFR § 201.6 that has  
34 been approved by the local community and is approved or in the process of securing final approval  
35 by FEMA. The local mitigation plan may be part of a larger multijurisdictional or regional mitigation  
36 plan;

37 (D) Adoption of a local Emergency Operations Plan (EOP) in accordance with State  
38 standards; and

39 (E) Attainment of an active rate classification (class #1 through #9) under FEMA's  
40 Community Rating System (CRS) that includes activities that prohibit new structures in mapped  
41 flood hazard zones; and

42 (3) Disbursements may be further prioritized or conditioned at the discretion of the State  
43 Resiliency Officer and upon approval of the State Resiliency Office Board.

**§29-31-8. Powers and duties related to the West Virginia Disaster Recovery Trust Fund.**

1 The State Resiliency Officer is hereby granted, has and may exercise all powers  
2 necessary or appropriate to carry out and effectuate the purposes set forth in §29-31-7 of this  
3 code. The State Resiliency Officer has the power:

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

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

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

- 12 (4) To sue and be sued;
- 13 (5) To acquire, hold, and dispose of real and personal property;
- 14 (6) To enter into agreements or other transactions with any federal or state agency,  
15 political subdivision, or person;
- 16 (7) To provide for the deposit of any funds or assets of the West Virginia Disaster Recovery  
17 Trust Fund with the state Treasurer for investment pursuant to §12-6C-6 of this code;
- 18 (8) To procure insurance against any loss in connection with its property in such amounts,  
19 and from such insurers, as may be necessary or desirable;
- 20 (9) To provide financial assistance to state and local governmental entities for the  
21 nonfederal share for federal disaster assistance programs;
- 22 (10) To provide for financial assistance to homeowners and communities that are not  
23 eligible for Community Development Block Grant-Disaster Recovery and other federal funding  
24 assistance;
- 25 (11) To provide loans and grants to local governments in disaster areas that need  
26 immediate cash flow assistance;
- 27 (12) To provide grants to governmental entities and organizations exempt from federal  
28 income tax under Section 501(c)(3) of the Internal Revenue Code to repair or replace  
29 infrastructure or equipment damaged as a result of a natural disaster;
- 30 (13) To provide financial assistance for verifiable losses of agricultural commodities due  
31 to a natural disaster; and
- 32 (14) Do all acts necessary and proper to carry out the powers granted to the State  
33 Resiliency Office within its disaster recovery mission.

**§29-31-9. Capitalization of the West Virginia Disaster Recovery Trust Fund.**

- 1 (a) The West Virginia Disaster Recovery Trust Fund may be granted an initial one-time  
2 allocation of \$10 million in state general funds for the purposes outlined in this article.

3 (b) The State Resiliency Officer shall, with the concurrence of the State Auditor, present  
4 an expenditure report to the State Resiliency Office Board by no later than December 1 annually.

5 (c) Upon review and verification by the State Resiliency Office Board that all expenditures  
6 within the West Virginia Disaster Recovery Trust Fund expenditure report are valid and justified  
7 uses of Recovery Fund resources, the State Resiliency Office Board shall submit to the Governor  
8 by no later than December 31 annually a budget and may request to replenish the Recovery Fund  
9 up to its initial \$10 million capitalization.

**§29-31-10. West Virginia Flood Resiliency Trust Fund.**

1 (a) There is hereby created a special trust fund which shall be designated and known as  
2 the West Virginia Flood Resiliency Trust Fund to be administered by the State Resiliency Officer.  
3 The Flood Fund shall consist of: (1) Any appropriations, grants, gifts, contributions, or revenues  
4 received by the Flood Fund from any source, public or private; and (2) all income earned on  
5 moneys, properties, and assets held in the Flood Fund. When any funds are received by the State  
6 Resiliency Officer from any source for flood resiliency activities, they shall be paid into the Flood  
7 Fund, and shall be disbursed and otherwise managed in the manner set forth in this article. The  
8 Flood Fund shall be treated by the Auditor and Treasurer as a special revenue fund and not as  
9 part of the general revenues of the state.

10 (b) All moneys, properties, and assets acquired by the State of West Virginia in the Flood  
11 Fund shall be held by it in trust for the purposes of carrying out its powers and duties and shall be  
12 used and reused in accordance with the purposes and provisions of this article. Such moneys,  
13 properties, and assets shall at no time be commingled with other public funds except as  
14 authorized for investment under §29-31-12 of this code. Disbursements from the Flood Fund shall  
15 be made only upon the written requisition of the State Resiliency Officer as set forth in §29-31-11  
16 and §29-31-12 of this code. If no need exists for immediate use or disbursement, moneys,  
17 properties, and assets in the Flood Fund shall be invested or reinvested by the State Resiliency  
18 Officer as provided in this article.

**§29-31-11. West Virginia Flood Resiliency Trust Fund disbursement.**

1           Upon the development of a new state Flood Resiliency Plan, the State Resiliency Officer  
2 shall have the power to disburse funds from the Flood Fund for the purposes of implementing the  
3 Flood Resiliency Plan to any person, political subdivision, or local organization in such amounts  
4 and in such manner, and to take such other actions, as the State Resiliency Officer may determine  
5 is necessary or appropriate and is outlined within the Flood Resiliency Plan. All assistance to any  
6 person, political subdivision, or local organization shall be for the purposes of building flood  
7 resiliency in the face of current and projected future flood disaster events: *Provided*, That except  
8 as provided hereafter in this section, requisitions for payment shall not be made or authorized for  
9 payment by the Auditor without the express approval of the State Resiliency Officer: *Provided*,  
10 *however*, That all disbursements shall require the express approval of the State Resiliency Officer,  
11 which approval shall be contingent on the proposed activity appearing as a valid proposed flood  
12 resiliency activity and prioritized for implementation within the most recent Flood Resiliency Plan  
13 as reviewed and approved by the State Resiliency Office Board.

14           Following the development and approval of a new state Flood Resiliency Plan, the State  
15 Resiliency Officer is granted the power to disburse funds from the Flood Resiliency Trust Fund.  
16 In accordance with these powers, the following provisions and conditions shall be adhered to:

17           (1) Disbursements from the Flood Fund shall be used solely for the purposes of enhancing  
18 flood prevention or protection as required by this article. The State Resiliency Office shall manage  
19 the Flood Fund and may disburse from the Flood Fund its reasonable costs and expenses  
20 incurred in the management of the Flood Fund;

21           (2) Disbursements shall be prioritized to the benefit of low-income geographic areas, and  
22 not less than 50 percent of all funds disbursed through the Flood Resiliency Trust Fund shall be  
23 disbursed to the benefit of low-income geographic areas and low-income households;

24           (3) Disbursements shall be prioritized toward the implementation of nature-based  
25 solutions, and not less than 50 percent of all funds disbursed through the Flood Resiliency Trust

26 Fund shall be disbursed to implement nature-based solutions. Of disbursements made to  
27 implement nature-based solutions, not less than 25 percent of these disbursements shall be  
28 utilized for the acquisition of single-family primary residences and multifamily residences in areas  
29 currently or projected to be subjected to significant flood impacts, assistance to residents  
30 relocating outside of the floodplain, and floodplain restoration activities on properties acquired  
31 through the Flood Fund;

32 (4) Disbursements to the benefit of a political subdivision may only be allowed upon the  
33 verification to the State Resiliency Officer that the recipient political subdivision has adopted, or  
34 will adopt within 24 months, the following programs or measures:

35 (A) Town road and bridge standards consistent with or exceeding those listed under the  
36 most current version of standards published by the West Virginia Department of Transportation;

37 (B) A flood hazard bylaw, or an adopted interim flood hazard bylaw as an intermediary  
38 step to secure enrollment and participation in the National Flood Insurance Program (NFIP), if  
39 applicable;

40 (C) A local Hazard Mitigation Plan that meets the provisions of 44 CFR § 201.6 that has  
41 been approved by the local community, and is approved or in the process of securing final  
42 approval by FEMA. The local mitigation plan may be part of a larger multijurisdictional or regional  
43 mitigation plan;

44 (D) Adoption of a local Emergency Operations Plan (EOP) in accordance with state  
45 standards; and,

46 (E) Attainment of an active rate classification (class #1 through #9) under FEMA's  
47 Community Rating System (CRS) that includes activities that prohibit new structures in mapped  
48 flood hazard zones; and

49 (5) Prioritization and conditions for disbursements at the discretion of the State Resiliency  
50 Officer and upon approval of the State Resiliency Office Board.

**§29-31-12. Powers and duties related to the West Virginia Flood Resiliency Trust Fund.**

1           The State Resiliency Officer is hereby granted, has, and may exercise all powers  
2 necessary or appropriate to carry out and effectuate the purposes set forth in §29-31-11 of this  
3 code. The State Resiliency Officer has the power:

4           (1) To accept appropriations, gifts, grants, bequests, and devises from any source, public  
5 or private, for deposit into the Flood Fund, and to use or dispose of the same to provide assistance  
6 to any person, political subdivision, or local organization for flood resiliency, flood prevention, and  
7 flood protection activities;

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

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

12           (4) To sue and be sued;

13           (5) To acquire, hold, and dispose of real and personal property;

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

16           (7) To provide for the deposit of any funds or assets of the West Virginia Flood Resiliency  
17 Trust Fund with the state Treasurer for investment pursuant to §12-6C-6 of this code;

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

20           (9) To procure services related to the development and updating of the state Flood  
21 Resiliency Plan;

22           (10) To provide loans or grants to political subdivisions and individual beneficiaries for the  
23 purpose of implementing activities proposed and outlined within the Flood Resiliency Plan;

24 (11) To provide loans or grants to governmental entities and organizations exempt from  
25 federal income tax under Section 501(c)(3) of the Internal Revenue Code for the purpose of  
26 implementing activities proposed and outlined within the Flood Resiliency Plan;

27 (12) To provide loans or grants to political subdivisions for the purpose of conducting flood  
28 prevention and protection studies in areas that are subject to recurrent flooding as confirmed by  
29 a locality-certified floodplain manager; and

30 (13) Do all acts necessary and proper to carry out the powers granted to the State  
31 Resiliency Office for flood resiliency activities.

**§29-31-13. Capitalization of the West Virginia Flood Resiliency Trust Fund.**

1 (a) The West Virginia Flood Resiliency Trust Fund may be granted an initial one-time  
2 allocation of \$40 million in state general funds for the purposes outlined in this article.

3 (b) The State Resiliency Officer shall, with the concurrence of the State Auditor, present  
4 an expenditure report to the State Resiliency Office Board by no later than December 1 annually.

5 (c) Upon review and verification by the State Resiliency Office Board that all expenditures  
6 within the West Virginia Flood Resiliency Trust Fund expenditure report are valid and justified  
7 uses of Flood Fund resources, the State Resiliency Office Board shall submit to the Governor by  
8 no later than December 31 annually a budget and may request to replenish the Flood Fund up to  
9 its initial \$40 million capitalization.

10 (d) Upon state receipt of Community Development Block Grant-Disaster Recovery funds  
11 in relation to a flood disaster event, and in order to provide the state with the flexibility required to  
12 provide assistance to any person, political subdivision, or local organization recovering from the  
13 flood disaster event, a minimum of six percent of those funds shall be dedicated for the purposes  
14 of Flood Resiliency Plan development and implementation activities to the extent that those  
15 purposes are in compliance with applicable federal laws and regulations governing such funds  
16 and compatible with the state's long-term recovery goals.

**§29-31-14. Tax exemption.**

1           The State Resiliency Officer shall not be required to pay any taxes and assessments to  
2 the state or any political subdivision of the state upon any of its moneys, properties, or assets or  
3 upon its obligations or other evidences of indebtedness pursuant to the provisions of this article,  
4 or upon any moneys, funds, revenues, or other income held or received into the West Virginia  
5 Disaster Recovery Trust Fund or the West Virginia Flood Resiliency Trust Fund.

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

*Jae Linn*  
.....  
Clerk of the Senate

*Steve Harmon*  
.....  
Clerk of the House of Delegates

Originated in the Senate.

In effect from passage.

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

2023 MAR 29 P 1:24

FILED

*C. P. Blevins*  
.....  
President of the Senate

*Rep. Hansley*  
.....  
Speaker of the House of Delegates

The within is approved this the 29<sup>th</sup>  
Day of March ..... 2023.

*James O. Eastman*  
.....  
Governor

PRESENTED TO THE GOVERNOR

MAR 17 2023

Time 2:54 pm