

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.

§15-5-1. Policy and purpose.

In view of the existing and increasing possibility of the occurrence of disasters of unprecedented size and destructiveness, resulting from terrorism, enemy attack, sabotage or other hostile action, or from fire, flood, earthquakes or other natural or man-made causes and in order to insure that preparations of this state will be adequate to deal with such disasters, and generally to provide for the common defense and to protect the public peace, health and safety and to preserve the lives and property of the people of the state, it is hereby found and declared to be necessary: (1) To create the Division of Homeland Security and Emergency Management and to authorize the creation of local and regional organizations for emergency services in the political subdivisions of the state; (2) to confer upon the Governor, and upon the executive heads of governing bodies of the political subdivisions of the state the emergency powers provided herein; (3) to provide for the rendering of mutual aid among the political subdivisions of the state and with other states and to cooperate with the federal government with respect to the carrying out of emergency services and homeland security functions; (4) and to establish and implement comprehensive homeland security and emergency management plans to deal with such disasters. It is further declared to be the purpose of this article and the policy of the state that all homeland security and emergency management funds and functions of this state be coordinated to the maximum extent with the Secretary of the Department of Military Affairs and Public Safety and with the comparable functions of the federal government including its various departments and agencies, of other states and localities and of private agencies of every type, so that the most effective preparation and use may be made of the nation's and this state's manpower, resources and facilities for dealing with any disaster that may occur.

§15-5-2. Definitions.

As used in this article:

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

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

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

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

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

(f) "Code" means the Code of West Virginia, one thousand nine hundred thirty-one, as amended;

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

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

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

(j) "Essential business activities" means a specific work or improvement within this state or a specific item of equipment or tangible personal property used within this state by any person to provide any essential goods or service deemed by the authority to be necessary for recovery from a disaster;

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

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

(m) "Residential housing" means a specific work or improvement within this state undertaken primarily to provide dwelling accommodations, including the acquisition, construction or rehabilitation of land, buildings and improvements thereto, for residential housing, including, but not limited to, facilities for temporary housing and emergency housing, and such other nonhousing facilities as may be incidental or appurtenant thereto;

(n) "Temporary housing" means a specific work or improvement within this state undertaken primarily to provide dwelling accommodations, including the acquisition, construction or rehabilitation of land, buildings and improvements thereto, for temporary residential shelters or housing for victims of a disaster and such other nonhousing facilities as may be incidental or appurtenant thereto; and

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

§15-5-3. Division of Homeland Security and Emergency Management created.

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

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

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

(d) The Director and other personnel of the Division of Homeland Security and Emergency Management shall be provided with appropriate office space, furniture, equipment, supplies, stationery and printing in the same manner as provided for personnel of other state agencies.

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

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

§15-5-4. West Virginia disaster recovery board created; organization of board; appointment of board members; term of office and expenses of board members; meetings.

(a) There is hereby created the West Virginia disaster recovery board. The board shall advise the governor and the director on all matters pertaining to emergency services and to perform such other duties as set forth in this article. The board shall be composed of nine members, seven of whom shall be appointed by the governor by and with the advice and consent of the Senate, and one of whom shall be the governor or his or her designee, who shall be chairman of the board and one of whom shall be the secretary of the department of public safety or his or her designee. The successor of each such appointed member shall be appointed in the same manner as the original appointments were made. No more than four of the appointed

board members shall at any one time belong to the same political party: **Provided**, That each congressional district of this state shall be represented by a member of the board.

(b) The provisions of this subsection apply to the seven members appointed by the governor. They shall be appointed for overlapping terms of three years and until their respective successors have been appointed and have qualified. For the purpose of original appointments, three members shall be appointed for a term of three years, two members shall be appointed for a term of two years, and two members shall be appointed for a term of one year. Members may be reappointed for any number of terms. Before entering upon the performance of his or her duties, each member shall take and subscribe to the oath prescribed by section five, article four of the constitution of this state. Vacancies shall be filled by appointment by the governor for the unexpired term of the member whose office shall be vacant and such appointment shall be made within sixty days of the occurrence of such vacancy. Members shall receive no compensation for the performance of their duties as members, but shall be entitled to be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties.

(c) A majority of the members of the board constitutes a quorum and meetings shall be held at the call of the chairman. No vacancy or absence in the membership of the board shall impair the rights of a quorum by a vote of the majority participating in such meeting to exercise all the rights and perform all the duties of the board and the authority.

(d) Upon the occurrence of a disaster requiring immediate action by the board, meetings of the board may be held by telephone conference call or other electronic communications and shall be exempt from the notice requirements of article nine-a, chapter six of this code. Any action taken pursuant to a vote of the board at any such meeting shall not be subject to invalidation by a person adversely affected by such action.

(e) The board shall annually elect one of the appointed members as vice chairman, and shall appoint one of its appointed members as secretary-treasurer. The member appointed as secretary-treasurer shall give bond in the sum of fifty thousand dollars in the manner provided in article two, chapter six of this code.

(f) All expenses incurred by the board shall be payable solely from funds of the board or from funds appropriated for such purpose by the Legislature and no liability or obligation shall be incurred by the board beyond the extent to which moneys are available from funds of the board or from such appropriations.

(g) Due to the fact that a natural disaster could strike any part of the state at any time, it is necessary to effectuate a means to immediately implement the provisions of this article. Therefore, until the board has been appointed the governor shall have the authority to:

(1) Accept and expend any private funds and expend no more than one million dollars of the governor's contingency fund for fiscal year one thousand nine hundred ninety to provide disaster relief as authorized in this article for any counties where disasters may occur before the board is appointed; and

(2) Report to the board when it is appointed on moneys expended and actions taken so that the board may include this information in its annual report required by section twelve of this article.

§15-5-4b. West Virginia disaster recovery board to disburse funds from recovery fund.

The board shall have the power, upon its own determination that a disaster has occurred or is about to occur in this state, to disburse funds from the disaster relief recovery trust fund created pursuant to section twenty-four of this article to any person, political subdivision or local organization for emergency services in such amounts and in such manner, and to take such other actions, as the board may determine is necessary or appropriate in order to provide assistance to any person, political subdivision or local organization for emergency services responding to or recovering from the disaster, or otherwise involved in disaster recovery activities.

§15-5-4c. Powers and duties of the West Virginia disaster recovery board.

The board is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate the purposes set forth in section four-b of this article. The authority has the power:

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

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

- (3) To make, and from time to time, amend and repeal bylaws for the governance of its activities not inconsistent with the provisions of this article;
- (4) To sue and be sued;
- (5) To acquire, hold and dispose of real and personal property;
- (6) To enter into agreements or other transactions with any federal or state agency, political subdivision or person;
- (7) To provide for the deposit of any funds or assets of the West Virginia disaster relief recovery trust fund with the state board of investments for investment;
- (8) To procure insurance against any loss in connection with its property in such amounts, and from such insurers, as may be necessary or desirable;
- (9) To use the recovery trust fund to pay the costs incurred by any state department or agency for the purpose of obtaining property appraisals and other certifications necessary to justify the involvement of the federal emergency management agency and to allow its determination of a presidentially declared disaster;
- (10) To establish, or assist in the establishment of, temporary housing and residential housing by, with or for political subdivisions declared to be in a disaster area by the federal emergency management agency or other agency or instrumentality of the United States or by the governor of this state;
- (11) To enter into purchase, lease, or other arrangements with an agency of the United States or this state for temporary housing or residential housing units to be occupied by disaster victims and make such units available to any political subdivision or persons;
- (12) To assist political subdivisions, local organizations for emergency services and nonprofit corporations in acquiring sites necessary for temporary housing or residential housing for disaster victims and in otherwise preparing the sites to receive and use temporary housing or residential housing units, including payment of transportation charges, by advancing or lending funds available to the board from the recovery fund;
- (13) To make grants and provide technical services to assist in the purchase or other acquisition, planning, processing, design, construction, or rehabilitation, improvement or operation of temporary housing or residential housing: **Provided**, That no such grant or other financial assistance shall be provided except upon a written finding by the board that such assistance and the manner in which it will be provided constitute a disaster recovery activity;
- (14) To make or participate in the making of insured or uninsured construction and permanent loans or grants for temporary housing or residential housing, community facilities and essential business activities: **Provided**, That no such loan or grant shall be made except upon a written finding by the board that the loan or grant and the manner in which it will be provided constitute a disaster recovery activity and that the loan or grant is not otherwise available, wholly or in part, from a private or public lender upon reasonably equivalent terms and conditions; and
- (15) Do all acts necessary and proper to carry out the powers granted to the board under this article.

§15-5-5. General powers of the governor.

The governor shall have general direction and control of the office of emergency services and shall be responsible for the carrying out of the provisions of this article and, in the event of disaster beyond local control, may assume direct operational control over all or any part of the emergency services functions within this state.

In performing his duties under this article, the governor is authorized to cooperate with the federal government, other states and private agencies in all matters pertaining to the provisions of emergency services for this state and the nation.

In performing his duties under this article to effect its policy and purpose, the governor is further authorized and empowered:

- (1) To make, amend and rescind the necessary orders, rules and regulations to carry out the provisions of this article within the limits of the authority conferred upon him herein, with due consideration of the plans of the federal government.
- (2) To prepare and implement a comprehensive plan and program for the provision of emergency services in this state, such plan and program to be integrated into and coordinated with comparable plans of the federal government and of other states to the fullest possible extent, and to coordinate the preparation of such plans and programs by the political subdivisions of this state, such plans to be integrated into and coordinated with the state plan and program to the fullest possible extent.

(3) In accordance with such state plan and program, to procure supplies and equipment, to institute training and public information programs, to take all other preparatory steps including the partial or full mobilization of emergency services organizations in advance of actual disaster and to insure the furnishing of adequately trained and equipped emergency services personnel in time of need.

(4) To make such studies and surveys of industries, resources and facilities in this state as may be necessary to ascertain the capabilities of the state for providing emergency services and to plan for the most efficient emergency use thereof.

(5) On behalf of the state, to enter into mutual aid arrangements with other states and to coordinate mutual aid plans between political subdivisions of this state.

(6) To delegate the administrative authority vested in him under this article, to provide for the delegation or transfer or both of the authority vested in the director under the provisions of this article, to any other person as the governor in his discretion may direct, and to provide for the subdelegation of any such authority.

(7) To appoint a disaster recovery team composed of departmental heads, members of the executive, political subdivision representatives, technicians, members of the public and other representatives, the composition of which team shall reflect the character and extent of the disaster itself.

(8) To appoint, in cooperation with local authorities, metropolitan area directors when practicable.

(9) To cooperate with the president and the heads of the armed forces, the civil defense agency of the United States and other appropriate federal officers and agencies and with the officers and agencies of other states in matters pertaining to the civil defense of the state and nation, including the direction and control of (a) blackouts and practice blackouts, air raid drills, mobilization of emergency services and civil defense forces and other tests and exercises; (b) warnings and signals for drills or attacks and the mechanical devices to be used in connection therewith; (c) the effective screening or extinguishing of all lights and lighting devices and appliances; (d) shutting off water mains, gas mains, electric power connections and the suspension of all other utility services; (e) the conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic during, prior and subsequent to drills or attack; (f) public meetings or gatherings; and (g) the evacuation and reception of the civilian population.

§15-5-6. Emergency powers of Governor.

The provisions of this section shall be operative only during the existence of a state of emergency. The existence of a state of emergency may be proclaimed by the Governor or by concurrent resolution of the Legislature if the Governor in such proclamation, or the Legislature in such resolution, finds that an attack upon the United States has occurred or is anticipated in the immediate future, or that a natural or man-made disaster of major proportions has actually occurred or is imminent within the state, and that the safety and welfare of the inhabitants of this state require an invocation of the provisions of this section. Any such emergency, whether proclaimed by the Governor or by the Legislature, shall terminate upon the proclamation of the termination thereof by the Governor, or the passage by the Legislature of a concurrent resolution terminating such emergency.

So long as such state of emergency exists, the Governor shall have and may exercise the following additional emergency powers:

(a) To enforce all laws, rules and regulations relating to the provision of emergency services and to assume direct operational control of any or all emergency service forces and helpers in the state;

(b) To sell, lend, lease, give, transfer or deliver materials or perform functions relating to emergency services on such terms and conditions as he or she shall prescribe and without regard to the limitations of any existing law and to account to the State Treasurer for any funds received for such property;

(c) To procure materials and facilities for emergency services by purchase, condemnation under the provisions of chapter fifty-four of this code or seizure pending institution of condemnation proceedings within thirty days from the seizing thereof and to construct, lease, transport, store, maintain, renovate or distribute such materials and facilities. Compensation for property so procured shall be made in the manner provided in chapter fifty-four of this code;

(d) To obtain the services of necessary personnel, required during the emergency, and to compensate them for their services from his or her contingent funds or such other funds as may be available to him or her;

(e) To provide and compel the evacuation of all or part of the population from any stricken or threatened area within the state and to take such steps as are necessary for the receipt and care of such evacuees;

(f) To control ingress and egress to and from a disaster area, the movement of persons within the area and the occupancy of premises therein;

(g) To suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders, rules or regulations of any state agency, if strict compliance therewith would in any way prevent, hinder or delay necessary action in coping with the emergency;

(h) To utilize such available resources of the state and of its political subdivisions as are reasonably necessary to cope with the emergency;

(i) To suspend or limit the sale, dispensing or transportation of alcoholic beverages, firearms, explosives and combustibles; (j) To make provision for the availability and use of temporary emergency housing; and

(k) To perform and exercise such other functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population.

No powers granted under this section may be interpreted to authorize the seizure or confiscation of a firearm from a person unless that firearm is unlawfully possessed or unlawfully carried by the person, or the person is otherwise engaged in a criminal act.

§15-5-7. Mobile support units.

The governor or his duly authorized representative may create and establish such number of mobile support units as are necessary to reinforce emergency service organizations in stricken areas and with due consideration of the plans of the federal government and of other states. He shall appoint a commander for each such unit who shall have primary responsibility for the organization, administration and operation of such unit. A mobile support unit shall be called to duty upon order of the governor and may function in any part of the state or, upon the conditions specified in this section, in other states.

Personnel of mobile support units while on duty, whether within or without the state, shall: (1) If they are employees of the state, have the powers, duties, rights, privileges and immunities and receive the compensation incidental to their employment; (2) if they are employees of a political subdivision of the state and whether serving within or without such political subdivision, have the powers, duties, rights, privileges and immunities and receive the compensation incidental to their employment; and (3) if they are not employees of the state or a political subdivision thereof, be entitled to compensation by the state at the same rate as is paid members of circuit court juries and to the same rights and immunities as are provided by law for the employees of this state. All personnel of mobile support units shall, while on duty, be subject to the operational control of the authority in charge of emergency service activities in the area in which they are serving and shall be reimbursed for all necessary travel and subsistence expenses actually incurred.

The state shall reimburse a political subdivision for the compensation paid and necessary travel, subsistence and maintenance expenses actually incurred of employees of such political subdivision while serving as members of a mobile support unit and for all payments for death, disability or injury of such employees incurred in the course of duty and for all losses of or damage to supplies and equipment of such political subdivision resulting from the operation of such mobile support unit.

§15-5-8. Local organization for emergency services.

Each political subdivision of this state is hereby authorized and directed to establish a local organization for emergency services in accordance with the state plan and program for the provision of emergency services. Such political subdivision may confer or authorize the conferring upon members of the auxiliary police the powers of peace officers, subject to such restrictions as it may impose.

Each local organization for emergency services shall consist of a director and a local emergency services council and such other members as may be required. The director shall be appointed by the executive officer or governing body of the political subdivision to serve at the will and pleasure of the executive officer or governing body and such political subdivisions are authorized to provide adequate compensation for him. The local council shall consist of five members, appointed by the executive officer or governing body of the political subdivision: **Provided**, That not more than three members thereof shall be members of the same political party. Council members shall serve a term of years staggered to provide continuity of service in accordance with local needs, without compensation, but shall be reimbursed for the reasonable and necessary expenses actually incurred in the performance of their duties.

The executive officer or governing body of the political subdivision shall have general direction and control of the local emergency services organization and shall be responsible for carrying out the provisions of this article. The director, subject to the direction and control of such executive officer or governing body, shall be executive head of the local emergency services organization and shall be directly responsible to the executive officer or governing body for the organization, administration and operation of the local emergency services program. The local council shall advise the director on all matters pertaining to emergency services. Each local organization shall perform emergency service functions within the territorial limits of the political subdivisions within which it is organized and, in addition, conduct such functions outside of such territorial limits as may be required pursuant to the provisions of sections nine and ten of this article.

In carrying out the provisions of this article each political subdivision in which any disaster as described in section one of this article occurs shall have the power to enter into contracts and incur obligations necessary to combat such disaster, protect the health and safety of persons and property and

provide emergency assistance to the victims of such disaster. Each political subdivision is authorized to exercise its powers under this section in light of the exigencies of extreme emergency situations without regard to time-consuming procedures and formalities prescribed by law (excepting mandatory constitutional requirements) pertaining to the performance of public work, entry into contracts, incurring of obligations, employment of temporary workers, rental of equipment, purchase of supplies and materials, levying of taxes and appropriation and expenditure of public funds.

§15-5-9. Mutual aid agreements.

The director of each local organization for emergency services may, in collaborating with other public and private agencies within this state, develop or cause to be developed mutual aid agreements for reciprocal aid and assistance in case of disaster too great to be dealt with unassisted. Such agreements shall be made in conformity with the state plan and program for emergency services and, in time of emergency, it shall be the duty of each local organization to render assistance in accordance therewith.

The director of each local organization may, subject to the approval of the governor, enter into mutual aid agreements with emergency service and civil defense agencies or organizations in other states for reciprocal aid and assistance in case of disaster too great to be dealt with unassisted.

§15-5-10. Regional organizations for emergency services.

Regional organizations for emergency services may be established in the discretion of the governor for any combination of political subdivisions. Each such organization shall be directed by the council which shall consist of the local directors, hereinbefore provided for in section eight of this article, of emergency services of the political subdivisions included in the region for which the organization is established. The local directors of emergency services shall designate the chairman, who may be one of the local directors, a private citizen or a local official, and may appoint committees representing different groups of interested citizens to assist them in the discharge of their duties. Members of such committees shall not be entitled to compensation for their services. The regional organizations and their members shall, in accordance with the state plan and program for emergency services, engage in such activities and perform such functions and duties as will further the provision of emergency services for the region and state. The emergency service organizations shall coordinate their activities with those of the regional planning and development councils in this state, and each local political subdivision included in the region shall pay its proportionate share of the ordinary expenses of such activities.

Any such organization may, within the limits of the funds made available for the purpose by the local political subdivisions included in the region or by the state, employ necessary personnel and fix their compensation, if any. Any such regional organization may be dissolved, reorganized or rearranged by the governor whenever in his discretion such action is necessary.

§15-5-11. Immunity and exemption; "duly qualified emergency service worker" defined.

(a) All functions hereunder and all other activities relating to emergency services are hereby declared to be governmental functions. Neither the state nor any political subdivision nor any agency of the state or political subdivision nor, except in cases of willful misconduct, any duly qualified emergency service worker complying with or reasonably attempting to comply with this article or any order, rule, regulation or ordinance promulgated pursuant to this article, shall be liable for the death of or injury to any person or for damage to any property as a result of such activity. This section does not affect the right of any person to receive benefits or compensation to which he or she would otherwise be entitled under this article, chapter twenty-three of this code, any Act of Congress or any other law.

(b) Any requirement for a license to practice any professional, mechanical or other skill does not apply to an authorized emergency service worker who shall, in the course of performing his or her duties, practice such skill during an emergency.

(c) As used in this section, "duly qualified emergency service worker" means:

(1) Any duly qualified full or part-time paid, volunteer or auxiliary employee of this state, or any other state, territory, possession or the District of Columbia, of the federal government, of any neighboring country or political subdivision thereof or of any agency or organization performing emergency services in this state subject to the order or control of or pursuant to the request of the state or any political subdivision thereof.

(2) Duly qualified instructors and properly supervised students in recognized educational programs where emergency services are taught. A recognized educational program shall include any program in an educational institution existing under the laws of this state and such other educational programs as shall be established by the Division of Homeland Security and Emergency Management or otherwise under this article.

(3) A member of any duly qualified mine rescue team designated by a mine operator pursuant to the provisions of section thirty-five, article one, chapter twenty-two-a of this code who is performing or engaging in emergency rescue services.

(d) A duly qualified emergency service worker performing his or her duty in this state pursuant to any lawful agreement, compact or arrangement for mutual aid and assistance to which the state or a political subdivision is a party shall possess the same powers, duties, immunities and privileges he or she would possess if performing the same duties in his or her own state, province or political subdivision thereof.

§15-5-12. Liability to sheltered persons.

Any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege or otherwise permits the designation or use of the whole or any part of such real estate or premises for the purpose of sheltering persons during an actual, impending, mock or practice emergency shall, together with his successors in interest, if any, not be civilly liable for negligently causing the death of or injury to any sheltered person on or about such real estate or premises or for loss of or damage to the property of any such sheltered person.

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

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

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

(c) Whenever any person, firm or corporation shall offer to the state or to any political subdivision thereof, services, equipment, supplies, materials or funds by way of gift, grant or loan, for purposes relating to homeland security or emergency services, the state, after consultation and in coordination with the Secretary and acting through the Governor, or the political subdivision after consultation and in coordination with the Secretary and acting through its executive officer or governing body, may accept the offer. Upon acceptance, the Governor of the state or executive officer or governing body of the political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive services, equipment, supplies, materials or funds on behalf of the state or the political subdivision and subject to the terms of the offer.

(d) The Governor may require any agency, authority, corporation, partnership or other entity to furnish a report, in both written and electronic form, detailing the source and receipt of all services, equipment, supplies, materials or funds for purposes relating to homeland security or emergency services as a condition of receiving these from the state. Within ten days of the receipt of any reports required under this subsection, the Governor shall furnish copies thereof to the Legislature.

§15-5-14. Political activity of emergency service organizations.

No organization for emergency services established under the authority of this article shall participate in any form of political activity, nor shall it be employed directly or indirectly for political purposes.

§15-5-15. Emergency service personnel.

(a) No person may be employed or associated in any capacity in homeland security or any emergency service organization established under this article who has been convicted of a felony or who advocates or has advocated a change by force or violence in the constitutional form of the government of the United States or this state or the overthrow of any government in the United States by force or violence or who has been convicted of or is under indictment or information charging any subversive act against the United States.

(b) Each person who is appointed to serve in an organization for homeland security or emergency services shall undergo a background check and shall, before entering upon his or her duties, take an oath, in writing, before a person authorized to administer oaths in this state, which shall be substantially as follows:

"I, _____, do solemnly swear or affirm that I will support and defend the Constitution of the United States and the Constitution of West Virginia against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or evasion; that I am not a convicted felon; and that I will faithfully and competently discharge the duties upon which I am about to enter.

"I do further swear or affirm that I do not advocate, nor am I a member of any political party or organization that advocates, the overthrow of the government of the United States or this state by force or violence; while I am a member of the (name of organization) I will not advocate or become a member of any political party or organization that advocates the overthrow of the government of the United States or this state by force or violence."

§15-5-15a. Paid leave for disaster service volunteers.

Any state employee who is a certified disaster service volunteer of the American Red Cross may be granted leave from his or her state employment with pay, for not more than fifteen work days in each year, to participate in specialized disaster relief services for the American Red Cross. Leave shall be granted under this section upon the request of the American Red Cross for the services of that employee and only upon the approval of that employee's immediate supervisor. Leave shall be granted without loss of pay, annual leave, sick leave, earned overtime compensation, seniority or compensatory time. The state shall compensate an employee granted leave under this section at the employee's regular rate of pay for those regular work hours during which the employee is absent from his or her state employment. Any supervisor granting leave to an employee for purposes of participating in specialized disaster relief shall make a report to the governor which includes the name of the employee and the cost of salary and benefits of that employee during the period of the leave. The governor shall keep a record of the total cost of the salary and benefits of employees who have been granted leave and in no event shall the total cost for all state agencies exceed one hundred thousand dollars: *Provided*, That upon approval of the governor and repayment of the cost to the employing agency, from the civil contingent fund, leave may be granted in an excess of a total cost of one hundred thousand dollars if a state of emergency has been proclaimed pursuant to section six of this article.

§15-5-16. Utilization of existing services and facilities.

In carrying out the provisions of this article, the governor, the chairmen of the regional councils and the executive officers or governing bodies of the political subdivisions of the state are directed to utilize the services, equipment, supplies and facilities of existing departments, offices and agencies of the state and of the political subdivisions to the maximum extent practicable, and the officers and personnel of all such departments, offices and agencies are directed to cooperate with and extend such services and facilities to the governor and to emergency service organizations of the state upon request.

§15-5-17. Enforcement.

It shall be the duty of every organization for emergency services established pursuant to this article and of the officers thereof to execute and enforce such orders, rules and regulations as may be made by the governor under this article. Each such organization shall have at its office available for public inspection all such orders, rules and regulations of the governor.

§15-5-18. Arrest by peace officer without warrant.

A peace officer, when in uniform or displaying a badge or other insignia of authority, may arrest without a warrant any person violating or attempting to violate in such officer's presence any order, rule or regulation made pursuant to this article. This authority shall be limited to arrest for violations of those orders, rules and regulations which affect the public generally.

§15-5-19. Unorganized militia.

The unorganized militia shall, at the call of the governor, be available for duty with the emergency service forces of this state. For purposes of this article, the unorganized militia shall consist of all able-bodied men and women between the ages of sixteen and fifty.

§15-5-19a. Possession of firearms during a declared state of emergency.

No powers granted under this article to state or local authorities may be interpreted to authorize the seizure or confiscation of a firearm from a person during a declared state of emergency unless that firearm is unlawfully possessed or unlawfully carried by the person, or the person is otherwise engaged in a criminal act.

§15-5-20. Disaster prevention.

(a) In addition to disaster prevention measures as included in the state, local, regional and interjurisdictional disaster plans, the governor shall consider on a continuing basis steps that could be taken to prevent or reduce the harmful consequences of disasters. At his direction, and pursuant to any other authority and competence they have, state agencies, including, but not limited to, those charged with responsibilities in connection with flood plain management, stream encroachment and flow regulation, weather modification, fire prevention and control, air quality, public works, land use and land-use planning and construction standards, shall make studies of disaster prevention-related matters. The governor, from time to time, shall make such recommendation to the Legislature, political subdivisions and other appropriate public and private entities as may facilitate measures for prevention or reduction of the harmful consequences of disasters.

(b) At the request of and in conjunction with the office of emergency services, the divisions of energy, natural resources and highways and any state department insured by the board of risk and insurance management shall keep land use and construction of structures and other facilities under continuing study and identify areas which are particularly susceptible to severe land shifting, subsidence, flooding or other catastrophic occurrences. Such studies shall concentrate on means of reducing or avoiding the dangers caused by such occurrences and the consequences thereof.

(c) In conjunction with the board of risk and insurance management and such other offices or agencies of state government as the board may deem appropriate, the director of the office of emergency services shall make a semi-annual report to the West Virginia disaster recovery board on the existence and location of abandoned motor vehicles, trash, debris and refuse that may in the event of a disaster cause an obstruction to natural water flow and thereby cause excessive and more extensive damage to property. The report shall further set forth a plan to remove and dispose of such trash, debris and refuse within the following semi-annual reporting period.

§15-5-21. Communications.

The office of emergency services shall ascertain what means exist for rapid and efficient communication in times of disaster. The office shall consider the desirability of supplementing such communication resources or of integrating them into a comprehensive state or federal-state telecommunications or other communications system or network. In studying the character and feasibility of any system or its several parts, the office shall evaluate the possibility of multipurpose use thereof for various state, regional and local governmental purposes. The office shall make recommendations to the governor as appropriate.

§15-5-22. Emergency Management Assistance Compact.

The "Emergency Management Assistance Compact" is hereby approved, ratified, adopted, enacted into law and entered into by the state of West Virginia with all other jurisdictions legally joining therein in accordance with its terms, in a form substantially as follows:

EMERGENCY MANAGEMENT ASSISTANCE COMPACT

ARTICLE I - PURPOSE AND AUTHORITIES

This compact is made and entered into by and between the participating member states which enact this compact, hereinafter called party states. For the purposes of this agreement, the term "states" is taken to mean the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all United States territorial possessions.

The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency or disaster that is duly declared by the governor of the affected state(s), whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency or enemy attack.

This compact shall also provide for mutual cooperation in emergency-related exercises, testing or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' National Guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

ARTICLE II - GENERAL IMPLEMENTATION

Each party state entering into this compact recognizes many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the federal government or any other source, that are essential to the safety, care and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this compact shall be understood.

On behalf of the governor of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

ARTICLE III - PARTY STATE RESPONSIBILITIES

(a) It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:

- (1) Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, emergency aspects of resource shortages, civil disorders, insurgency or enemy attack.
- (2) Review party states' individual emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency.
- (3) Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans.
- (4) Assist in warning communities adjacent to or crossing the state boundaries.

(5) Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services and resources, both human and material.

(6) Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness.

(7) Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above responsibilities.

(b) The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this agreement shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within thirty days of the verbal request. Requests shall provide the following information:

(1) A description of the emergency service function for which assistance is needed, such as but not limited to fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue.

(2) The amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed.

(3) The specific place and time for staging of the assisting party's response and a point of contact at that location.

(c) There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States government, with free exchange of information, plans and resource records relating to emergency capabilities.

ARTICLE IV - LIMITATIONS

Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof: *Provided*, That it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state.

Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor of the party state that is to receive assistance or commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect or loaned resources remain in the receiving state(s), whichever is longer.

ARTICLE V - LICENSES AND PERMITS

Whenever any person holds a license, certificate or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.

ARTICLE VI - LIABILITY

Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence or recklessness.

ARTICLE VII - SUPPLEMENTARY AGREEMENTS

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party hereto, this instrument contains elements of a broad base common to all states, and nothing herein contained shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

ARTICLE VIII - COMPENSATION

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their ownstate.

ARTICLE IX - REIMBURSEMENT

Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such requests: *Provided*, That any aiding party state may assume, in whole or in part, such loss, damage, expense or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost: *Provided, however*, That any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses shall not be reimbursable under this provision.

ARTICLE X - EVACUATION

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the party states and the emergency management/services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies and all other relevant factors. Such plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. Such expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

ARTICLE XI - IMPLEMENTATION

(a) This compact shall become operative immediately upon its enactment into law by any two states; thereafter, this compact shall become effective as to any other state upon its enactment by such state.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until thirty days after the governor of the withdrawing state has given notice in writing of such withdrawal to the governors of all other party states. Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

(c) Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the federal emergency management agency and other appropriate agencies of the United States government.

ARTICLE XII - VALIDITY

This compact shall be construed to effectuate the purposes stated in Article I hereof. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to other persons and circumstances shall not be affected thereby.

ARTICLE XIII - ADDITIONAL PROVISIONS

Nothing in this compact shall authorize or permit the use of military force by the National Guard of a state at any place outside that state in any emergency for which the President is authorized by law to call into federal service the militia, or for any purpose for which the use of the Army or the Air Force would in the absence of express statutory authorization be prohibited under Section 1385 of Title 18, United States Code.

ARTICLE XIV - REPORTING TO LEGISLATURE

The director of the office of emergency services shall, on or before the first day of January, one thousand nine hundred ninety-seven, provide to the joint committee on government and finance copies of all mutual aid plans and procedures promulgated, developed or entered into after the effective date of this section. The director shall annually thereafter provide the joint committee on government and finance with copies of all new or amended mutual aid plans and procedures on or before the first day of January of each year.

§15-5-23. Severability; conflicts.

(a) If any section, subsection, subdivision, provision, clause or phrase of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other sections, subsections, subdivisions, provisions, clauses or

phrases or applications of the article, and to this end each and every section, subsection, subdivision, provision, clause and phrase of this article is declared to be severable. The Legislature hereby declares that it would have enacted the remaining sections, subsections, provisions, clauses and phrases of this article even if it had known that any section, subsection, subdivision, provision, clause and phrase thereof would be declared to be unconstitutional or invalid, and that it would have enacted this article even if it had known that the application thereof to any person or circumstance would be held to be unconstitutional or invalid.

(b) The provisions of subsection (a) of this section shall be fully applicable to all future amendments or additions to this article, with like effect as if the provisions of said subsection (a) were set forth in extenso in every such amendment or addition and were reenacted as a part thereof.

§15-5-24. Disaster recovery trust fund; use of funds of authority.

(a) There is hereby created a special trust fund which shall be designated and known as the "West Virginia Disaster Recovery Trust Fund" to be administered by the West Virginia disaster recovery board. The recovery fund shall consist of (i) any appropriations, grants, gifts, contributions or revenues received by the recovery fund from any source, public or private, and (ii) all income earned on moneys, properties and assets held in the recovery fund. When any funds are received by the board from any source, they shall be paid into the recovery fund, and shall be disbursed and otherwise managed in the manner set forth in this article. The recovery fund shall be treated by the auditor and treasurer as a special revenue fund and not as part of the general revenues of the state.

(b) All moneys, properties and assets acquired by the West Virginia disaster recovery board shall be held by it in trust for the purposes of carrying out its powers and duties, and shall be used and re-used in accordance with the purposes and provisions of this article. Such moneys, properties and assets shall at no time be commingled with other public funds. Disbursements from the recovery fund shall be made only upon the written requisition of the chairman accompanied by a certified resolution of the board. If no need exists for immediate use or disbursement, moneys, properties and assets in the recovery fund shall be invested or reinvested by the board as provided in this article.

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

No portion of the recovery fund shall inure to the benefit of or be distributable to members of the West Virginia disaster recovery board or other private persons except that the board shall be authorized and empowered to make loans or grants and exercise its other powers as specified in this article in furtherance of its purpose: **Provided**, That no such loans or grants shall be made to and no property shall be purchased or leased from, or sold, leased or otherwise disposed of to, any member or officer of the board except as provided under subsection (d), section five, article two, chapter six-b of this code.

§15-5-26. Tax exemption.

The board shall not be required to pay any taxes and assessments to the state or any political subdivision of the state upon any of its moneys, properties or assets or upon its obligations or other evidences of indebtedness pursuant to the provisions of this article, or upon any moneys, funds, revenues or other income held or received by the West Virginia disaster recovery board.

§15-5-27. Annual report.

The board shall prepare and transmit to the Legislature annually as of the thirtieth day of June a report of its disaster recovery activities. The report shall include the number of requests for distributions, the number of distributions made and the amount of each distribution; a listing by source and amount of moneys, properties and assets that have been contributed to the recovery fund since the thirtieth day of June of the preceding year; the outstanding balance of the recovery fund; and an itemized list of any administrative costs incurred.