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West Virginia Emergency Management and Homeland Security Statutory Authorities Summarized

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West Virginia Emergency Management and Homeland Security Statutory Authorities Summarized

Summary

The emergency management code for West Virginia (chapter 15-5) created a state emergency services agency and authorized creation of local and regional organizations for emergency services. The statute confers emergency powers upon the governor and the executive heads of governing bodies of political subdivisions, and provides for the rendering of mutual aid among the political subdivisions, other states, and with the federal government. The Emergency Interim Legislative Succession Act and Emergency Interim Executive and Judicial Succession Act provide lines of succession for all levels of government.

This report is one of a series that profiles emergency management and homeland security statutory authorities of the 50 states, the District of Columbia, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, American Samoa, Guam, and the U.S. Virgin Islands. Each profile identifies the more significant elements of state statutes, generally as codified. Congressional readers may wish to conduct further searches for related provisions using the Internet link presented in the last section of this report. The National Conference of State Legislatures provided primary research assistance in the development of these profiles under contract to the Congressional Research Service (CRS). Summary information on all of the profiles is presented in CRS Report RL32287. This report will be updated as developments warrant.

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West Virginia Emergency Management and Homeland Security Statutory Authorities Summarized

Entities with Key Responsibilities

Governor: The governor is authorized to assume direct operational control over all or any part of the state's emergency services functions, and to cooperate with the federal government, other states and private agencies in all matters pertaining to the delivery of emergency services. The governor may make or change directives, prepare and implement a comprehensive plan for emergency services (which is integrated into and coordinated with comparable plans of the federal government and other states), and coordinate plans of political subdivisions. The governor may: procure supplies and equipment; institute training and public information programs; order partial or full mobilization of emergency services organizations; and, ascertain the capabilities of the state for providing emergency services.

The governor may also: enter into mutual aid arrangements with other states and coordinate mutual aid between political subdivisions; appoint a disaster recovery team; cooperate with the President of the United States, federal agencies, and with other states in matters pertaining to civil defense, including the management of blackouts, mobilization of emergency services and civil defense forces, suspension of utility services, and evacuation of the civilian population (W. Va. Code §15-5-5). During a state of emergency the governor may assume direct operational control of any or all emergency service forces and helpers and sell, lend, give, or procure material and facilities or perform functions relating to emergency services. The governor is to provide compensation for property taken; may compel evacuation of all or part of the population from any stricken or threatened area; control ingress and egress to and from a disaster area; suspend the provisions of any regulatory statute or any agency order, rule or regulation as necessary; use all available resources; suspend or limit the sale, dispensation, or transportation of alcoholic beverages, firearms, explosives and combustibles; and provide for the availability and use of temporary emergency housing (W. Va. Code §15-5-6). The governor, the chairs of regional councils, and the executive officers or governing bodies of political subdivisions are directed to use the services, equipment, supplies, and facilities of existing departments, offices, and agencies of the state and political subdivisions to the maximum extent practicable (W. Va. Code §15-5-16). The unorganized militia is available at the call of the governor for duty with the emergency service forces (W. Va. Code §15-5-19).

Office of Emergency Services(OES): Created within the office of the governor, the OES director is appointed by the governor. The statute identifies employees as members of the state civil service system and part of the classified service. The director of OES coordinates the activities of all organizations for emergency services and maintains liaison with emergency service and civil defense agencies and organizations of other states and the federal government. The director may acquire by purchase, lease, or gift, real property and rights or easements to construct buildings for housing an emergency services control center (W. Va. Code §15-5-3). OES determines the means for rapid and efficient communication in times of disaster and considers supplementing communication resources or integrating them into state, federal-state or other communications systems (W. Va. Code §15-5-21).

Disaster Recovery Board: The statute created the board to advise the governor and the OES director on all matters pertaining to emergency services and outlines board membership requirements, term, and quorum standards. Meetings may be held by telephone conference call or other electronic communications, and are exempt from standard notice requirements if a disaster requires immediate action by the board (W. Va. Code §15-5-4). See also “Types of Assistance.”

Political subdivisions: The statute authorizes and directs units of local government to establish local organizations for emergency services. Political subdivisions may confer upon members of the auxiliary police the powers of peace officers. Each local organization consists of a director and a local emergency services council appointed by the executive officer or governing body and other members as required. The executive officer or governing body of the political subdivision exercises general direction and control of the local emergency services organization; the council advises the director, who is executive head of the organization. Each local organization must perform emergency service functions within its territorial limits as well as outside the limits as required. Each political subdivision in which any disaster occurs has the power to enter into contracts and incur obligations necessary to combat disaster, protect the health and safety of persons and property, and provide emergency assistance to victims (W. Va. Code §15-5-8).

Regional emergency service organizations: The governor may established such organizations for any combination of political subdivisions. Each organization is directed by a council of local emergency service directors of the political subdivisions in the region. Emergency service organizations are required to coordinate their activities with those of the regional planning and development councils in the state; each political subdivision included in the region pays its proportionate share of the ordinary expenses of activities. Regional organizations may be dissolved, reorganized or rearranged at the discretion of the governor (W. Va. Code §15-5-10).

Emergency Response Commission: The statute created the state emergency response commission, identifies membership, and establishes emergency planning districts and committees in accordance with the federal Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 et seq. (W. Va. Code §15-5A et. seq.).

Preparedness

The governor or the authorized representative of the governor may create mobile support units “with due consideration” of federal and other state plans to reinforce disaster organizations in stricken areas and is empowered to appoint a commander for each unit. Mobile support units are called to duty by the governor, and perform their functions in any part of the state or, under certain conditions, in other states (W. Va. Code §15-5-7).

Declaration Procedures

A state of emergency may be proclaimed by the governor, or by concurrent resolution of the legislature, if an attack upon the United States has occurred or is imminent, or if a natural or man-made disaster of major proportions has occurred or is imminent. Any such state of emergency terminates upon gubernatorial proclamation or passage of a concurrent resolution by the legislature (W. Va. Code §15-5-6).

Types of Assistance

The governor may call out the military forces of the state to execute laws, suppress insurrection, and repel invasion (W. Va. Constitution Article 7-12).

The statute authorizes the disaster recovery board to disburse funds from the disaster relief recovery trust fund and take other actions to assist persons, political subdivisions, or local organizations for emergency services responding to or recovering from a disaster (W. Va. Code §15-5-4b). The board is authorized to accept appropriations, gifts, grants, bequests, and devises from any public or private source and use them to provide assistance. The recovery trust fund may be used to pay costs incurred by any state department or agency in conjunction with federal emergency aid and a presidentially declared disaster. The board may establish temporary housing for disaster victims and help local governments acquire sites, provided that the financial assistance constitutes a disaster recovery activity. The board may make insured or uninsured loans or grants for temporary housing, residential housing, community facilities, and essential business activities upon a finding that the loan or grant would constitute a disaster recovery activity, and that funds are not otherwise available (W. Va. Code §15-5-4c).

Mutual Aid

The Emergency Management Assistance Compact is codified (W. Va. Code §15-5-22).

The director of each local organization for emergency services may, in collaboration with other public and private agencies within the state, develop mutual aid agreements for reciprocal aid and assistance. Also, subject to the approval of the governor, directors may enter into mutual aid agreements with emergency service and

civil defense agencies or organizations in other states for reciprocal aid and assistance (W. Va. Code §15-5-9).

Persons or entities providing lawful emergency medical services are authorized to enter into and renew service reciprocity agreements. The commissioner of the Bureau of Public Health is authorized to enter into service reciprocity agreements with appropriate officials in other states to provide emergency medical services (W. Va. Code §16-4C-20). The commissioner may restrict an out-of-state provider of emergency services to a particular geographic area of the state (W. Va. Code §16-4C-21).

See also “Entities with Key Responsibilities” and “Other.”

Funding

The statute established a “temporary assistance for needy families rainy day fund” in the state treasury, into which the secretary initially deposited the amount of \$36 million in federal block grant funds. The fund serves as a safety net for the state works program and is to be used for continued support of the program in the event of reduced federal funding, economic downturn, natural disasters or other events which may deplete the program’s funds or makes them otherwise unavailable (W. Va. Code §9-9-21).

Each political subdivision has the power to make appropriations for the payment of expenses of its local organization for emergency services, or its proportionate share of expenses of a regional organization, or both. The statute authorizes acceptance of federal assistance, or aid provided by other organizations, for services, equipment, supplies, materials or funds by way of gift, grant, or loan, for purposes relating to emergency services (W. Va. Code §15-5-13).

The statute created the West Virginia Disaster Recovery Trust Fund, which is administered by the disaster recovery board. The fund consists of any appropriations, grants, gifts, contributions or revenues received by the recovery fund from any source, public or private, as well as all income earned on moneys, properties and assets held in the recovery fund. The recovery fund is to be treated as a special revenue fund and not as part of the general revenues of the state. The statute requires that moneys, properties, and assets be held in trust for carrying out the powers and duties of the disaster recovery board. The statute prohibits use of the fund for the benefit of members of the disaster recovery board (W. Va. Code §15-5-24 to 25).

Hazard Mitigation

The governor is to consider, on a continuing basis, steps that could be taken to prevent or reduce the harmful consequences of disasters. State agencies must make studies of disaster-related matters to enhance prevention. The governor may make recommendations to the legislature, political subdivisions, and other appropriate public and private entities to facilitate measures for the prevention or reduction of the harmful consequences of disasters. The divisions of energy, natural resources and highways, among others, are required to study land use practices and the construction

of structures and other facilities, and identify areas particularly susceptible to severe land shifting, subsidence, flooding or other catastrophic occurrences. Such studies are to concentrate on means of reducing or avoiding dangers caused by such occurrences and their consequences (W. Va. Code §15-5-20).

Continuity of Government Operations

Each legislator must designate emergency interim successors meeting specified requirements and identify their order of succession (W. Va. Code §15-7-4 through §15-7-7, §15-7-11 and 12). In the event of an attack, or when an attack may be imminent, and the governor deems the place of session unsafe, it may be changed to any place within or without the state which he deems safer and convenient (W. Va. Code §15-7-10).

Whenever, due to an enemy attack, or an anticipated attack, it becomes imprudent or impossible to conduct the affairs of local government at its regular location, the governing body of each political subdivision may establish an emergency temporary location where public business may be transacted within or without the state (W. Va. Code §1-4-1).

The Emergency Interim Executive and Judicial Succession Act provides for the effective operation of government during an attack upon the United States and facilitates the early resumption of functions. The statute provides for additional officers to exercise the powers and duties of governor, state and political subdivision offices, and provides for special emergency judges (W. Va. Code §6A-1-1 to 2). The statute provides for a line of succession to the office of governor beyond that set in the state constitution (W. Va. Code §6A-1-4(a)). The statute authorizes state officers to designate deputies or emergency interim successors and specify their order of succession (W. Va. Code §6A-1-5). The statute enables local governing bodies of cities, towns, and counties to enact resolutions or ordinances for filling vacancies and to provide for emergency interim successors to offices (W. Va. Code §6A-1-6).

In the event of an attack, when any authorized judge is unavailable to exercise the powers and duties of the office, the duties are to be discharged by a special emergency judge. Each member of the state supreme court of appeals is to designate special emergency judges and specify the order of succession. Special emergency interim judges of all other courts of record are to be elected by the attorneys practicing within the jurisdiction (W. Va. Code §6A-1-8). Specified officials are authorized to act as governor, and emergency interim successors and special emergency judges are empowered to exercise the powers and duties of office only after an attack upon the United States. The legislature, by concurrent resolution, may at any time terminate the authority of emergency officials (W. Va. Code §6A-1-10). Designated emergency interim successors or special emergency judges may be removed or replaced by designating authority at any time, with or without cause (W. Va. Code §6A-1-11).

The continuity of government constitutional amendment authorizes the legislature to provide for the prompt and temporary succession to the powers and duties of public offices, and the duty to adopt measures necessary to insure the continuity of governmental operations in periods of emergency resulting from disasters caused by enemy attack (W. Va. Constitution Article 6-54).

The governor may convene the legislature at another place when it cannot safely assemble at the seat of government. The legislature may, when in session, adjourn to some other place, when the public safety or welfare, or the safety of the members, require such action (W. Va. Constitution Article 6-21).

Other

The statute provides liability protection for state or political subdivision employees providing emergency services. Licensing requirements for any professional, mechanical or other skill do not apply to authorized emergency service workers. Qualified emergency service workers performing under an arrangement for mutual aid possess the same powers, duties, immunities, and privileges as if performing the same duties in their own state (W. Va. Code §15-5-11).

The statute grants immunity from civil liability to persons who voluntarily and without compensation permit their property to be used as a public shelter during an actual, impending, mock or practice emergency (W. Va. Code §15-5-12).

The statute prohibits emergency management personnel from advocating subversive activities (W. Va. Code §15-5-15).

A state employee who is a certified disaster service volunteer may be granted leave up to 15 days in each year to participate in specialized disaster relief services for the American Red Cross, without benefit loss (W. Va. Code §15-5-15a).

The state fire commission is directed to promulgate rules establishing criteria for qualified training programs in hazardous substance emergency response activities and procedures (W. Va. Code §29-3-5a).

Key Terms

Table 1. Key Emergency Management and Homeland Security Terms Defined in West Virginia Statutes, with Citations

Terms	Citations
Attack	W. Va. Code §6A-1-3(d), §15-7-3 (a)
Commission	W. Va. Code §15-5A-3(d)
Disaster	W. Va. Code §15-5-2(h)
Disaster recovery activities	W. Va. Code §15-5-2(i)

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Emergency interim successor	W. Va. Code §6A-1-3(b)
Emergency planning district	W. Va. Code §15-5A-3(f)
Emergency services	W. Va. Code §15-5-2(a), §15-5-2(j)
Essential business activities	W. Va. Code §15-5-2(k)
Local emergency planning committee	W. Va. Code §15-5A-3(h)
Local organization for emergency services	W. Va. Code §15-5-2(b)
Mobile support unit	W. Va. Code §15-5-2(c)
Recovery fund	W. Va. Code §15-5-2(m)
Temporary housing	W. Va. Code §15-5-2(o)

For Further Research

The citations noted above and other elements of the state code for West Virginia may be searched at [<http://129.71.164.29/WVCODE/masterfrm3Banner.cfm>].