

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 694**

5 (SENATORS KESSLER AND WHITE, *original sponsors*)

6 _____
7 [Passed April 11, 2009; in effect from passage.]
8 _____
9

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

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

23 That the Code of West Virginia, 1931, as amended, be amended
24 by adding thereto a new section, designated §15-5-28, to read as
25 follows:

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

2 **§15-5-28. Statewide mutual aid system.**

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

23 (b) The Statewide Intrastate Mutual Aid Committee is hereby
24 created. The committee shall consist of eleven members from various
25 different public safety entities and other governmental entities
26 who shall be appointed by the Governor. The Director of the

1 Division of Homeland Security and Emergency Management, or his or
2 her designee, shall chair the committee. This committee shall be
3 multidisciplinary and representative of emergency management and
4 response disciplines as well as local government. It shall be the
5 committee's responsibility to hold, at a minimum, annual meetings
6 to review the progress and status of statewide mutual aid, assist
7 in developing methods to track and evaluate activation of the
8 system and to examine issues facing participating political
9 subdivisions regarding the implementation of this legislation. The
10 committee may prepare an annual report on the condition and
11 effectiveness of mutual aid in the state, make recommendations for
12 correcting any deficiencies and submit that report to the
13 appropriate legislative committee or other governing body. Members
14 of the committee shall serve a maximum two-year term.

15 (c) Upon the enactment of this legislation, all political
16 subdivisions within the state are members of the statewide mutual
17 aid system: *Provided*, That a political subdivision within the state
18 may elect not to participate or to withdraw from the system upon
19 the enactment of an appropriate resolution by its governing body
20 declaring that it elects not to participate in the statewide mutual
21 aid system. A copy of any such resolution shall be provided to the
22 Division of Homeland Security and Emergency Management.

23 (d) This section does not preclude participating political
24 subdivisions from entering into supplementary agreements with
25 another political subdivision and does not affect any other
26 agreement to which a political subdivision may currently be a party

1 to, or decide to be a party to.

2 (e) "Emergency responder", as used in this article, shall mean
3 anyone with special skills, qualifications, training, knowledge and
4 experience in the public or private sectors that would be
5 beneficial to a participating political subdivision in response to
6 a locally declared emergency as defined in any applicable law or
7 ordinance or authorized drill or exercises; and who is requested
8 and authorized to respond. Under this definition, an emergency
9 responder may be required to possess a license, certificate, permit
10 or other official recognition for his or her expertise in a
11 particular field or area of knowledge. An emergency responder could
12 include, but is in no way limited to, the following:
13 Law-enforcement officers, firefighters, emergency medical services
14 personnel, physicians, nurses, other public health personnel,
15 emergency management personnel, public works personnel, local
16 emergency debris removal teams, those persons with specialized
17 equipment operations skills or training or any other skills needed
18 to provide aid in a declared emergency.

19 (f) It shall be the responsibility of each participating
20 political subdivision with jurisdiction over and responsibility for
21 emergency management within that certain subdivision to do all of
22 the following:

23 (1) Identify potential hazards that could affect the
24 participant using an identification system common to all
25 participating jurisdictions.

26 (2) Conduct joint planning, intelligence sharing and threat

1 assessment development with contiguous participating political
2 subdivisions, and conduct joint training at least biennially.

3 (3) Identify and inventory the current services, equipment,
4 supplies, personnel and other resources related to planning,
5 prevention, mitigation, response and recovery activities of the
6 participating political subdivision.

7 (4) Adopt and implement the National Incident Management
8 System approved by the State of West Virginia.

9 (g) A participating political subdivision may request
10 assistance of other participating political subdivisions in
11 preventing, mitigating, responding to and recovering from disasters
12 that result in locally declared emergencies or in concert with
13 authorized drills or exercises as allowed under this section.
14 Requests for assistance shall be made to the Division of Homeland
15 Security and Emergency Management through the designated county
16 emergency management director by the chief executive officer of a
17 participating political subdivision, or his or her designee for
18 response. Requests may be verbal or in writing. Verbal requests
19 will be followed up with a written request as soon as is practical
20 or such number of days as the state, in its discretion, may
21 dictate.

22 (h) The obligation of a participating political subdivision to
23 provide assistance in the prevention of, response to and recovery
24 from a locally declared emergency or in authorized drills or
25 exercises is subject to the following conditions:

26 (1) A participating political subdivision requesting

1 assistance must have either declared a state of emergency in the
2 manner outlined in this section or authorized drills and exercises;

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

6 (3) Emergency response personnel of a responding participating
7 political subdivision shall continue under the command and control
8 of their responding jurisdiction to include medical protocols,
9 standard operating procedures and other protocols, but shall be
10 under the operational control of the appropriate officials within
11 the National Incident Management System of the participating
12 political subdivision receiving the assistance; and

13 (4) Assets and equipment of a responding participating
14 political subdivision shall continue under the control of the
15 responding jurisdiction, but shall be under the operational control
16 of the appropriate officials within the National Incident
17 Management System of the participating political subdivision
18 receiving the assistance.

19 (i) If a person or entity holds a license, certificate or
20 other permit issued by a participating political subdivision or the
21 state evidencing qualification in a professional, mechanical or
22 other skill and the assistance of that person or entity is
23 requested by a participating political subdivision, the person or
24 entity shall be deemed to be licensed, certified or permitted in
25 the political subdivision requesting assistance for the duration of
26 the declared emergency or authorized drills or exercises and

1 subject to any limitations and conditions the chief executive of
2 the participating political subdivision receiving the assistance
3 may prescribe by executive order or otherwise.

4 (j) (1) Any requesting political subdivision shall reimburse
5 the participating political subdivision rendering aid under this
6 system and in accordance with procedures developed by the Statewide
7 Intrastate Mutual Aid Committee, provided the request for aid is
8 authorized by the Division of Homeland Security and Emergency
9 Management. A participating political subdivision providing
10 assistance may determine to donate assets of any kind to a
11 receiving participating political subdivision. Requests for
12 reimbursement shall be in accordance with procedures developed by
13 the Statewide Intrastate Mutual Aid Committee.

14 (2) Should a dispute arise between parties to the system
15 regarding reimbursement, involved parties will make every effort to
16 resolve the dispute within thirty days of written notice of the
17 dispute by the party asserting noncompliance. In the event that the
18 dispute is not resolved within ninety days of the notice of the
19 claim, either party may request the dispute be solved through
20 arbitration. Any arbitration under this provision shall be
21 conducted under the commercial arbitration rules of the American
22 Arbitration Association.

23 (k) The Statewide Intrastate Mutual Aid Committee shall
24 develop comprehensive guidelines and procedures that address,
25 including, but not limited to, the following: Projected or
26 anticipated costs, checklists for requesting and providing

1 assistance, recordkeeping for all participating political
2 subdivisions, reimbursement procedures and other necessary
3 implementation elements along with the necessary forms for requests
4 and other records documenting deployment and return of assets.

5 (l) Personnel of a participating political subdivision
6 responding to or rendering assistance for a request who sustain
7 injury or death in the course of, and arising out of, their
8 employment are entitled to all applicable benefits normally
9 available to personnel while performing their duties for their
10 employer. Responders shall receive any additional state and federal
11 benefits that may be available to them for line-of-duty deaths.

12 (m) All activities performed under this section are deemed
13 hereby to be governmental functions. For the purposes of liability,
14 all persons responding under the operational control of the
15 requesting political subdivision are deemed to be employees of the
16 requesting participating political subdivision.

17 (n) Whenever the law-enforcement officials of any political
18 subdivision are rendering outside aid pursuant their lawful
19 authority, and with the approval of the Director of the West
20 Virginia Division of Homeland Security and Emergency Management,
21 and under the authority of a state of emergency as officially
22 proclaimed by the Governor, such law-enforcement officials shall
23 have the same authority, powers, duties, rights, privileges and
24 immunities as if they were performing their law-enforcement duties
25 in the political subdivisions in which they are normally employed.
26 The authority vested in the law-enforcement official, in accordance

1 with this section, shall vest upon reporting in person to the
2 Emergency Management Agency official in charge and on duty at the
3 county or city of destination assignment. The law-enforcement
4 official shall act under the authority, supervision and control of
5 the highest ranking law-enforcement official within the assigned
6 outside jurisdiction. Law enforcement and powers of arrest
7 authority will not attach to the law-enforcement official while in
8 transit from his or her jurisdiction of origin en route to his or
9 her assigned jurisdiction under intrastate mutual aid assistance.