

22101300D

HOUSE BILL NO. 1039

Offered January 12, 2022

Prefiled January 12, 2022

A BILL to amend and reenact § 44-146.17 of the Code of Virginia, as it is currently effective and as it shall become effective, relating to Emergency Services and Disaster Law; limitation on duration of executive orders.

Patron—Scott, P.A.

Referred to Committee on Rules

Be it enacted by the General Assembly of Virginia:

1. That § 44-146.17, as it is currently effective and as it shall become effective, of the Code of Virginia is amended and reenacted as follows:

§ 44-146.17. (Effective until July 1, 2023) Powers and duties of Governor.

The Governor shall be Director of Emergency Management. He shall take such action from time to time as is necessary for the adequate promotion and coordination of state and local emergency services activities relating to the safety and welfare of the Commonwealth in time of disasters.

The Governor shall have, in addition to his powers hereinafter or elsewhere prescribed by law, the following powers and duties:

(1) To proclaim and publish such rules and regulations and to issue such orders as may, in his judgment, be necessary to accomplish the purposes of this chapter including, ~~but not limited to~~ such measures as are in his judgment required to control, restrict, allocate, or regulate the use, sale, production, and distribution of food, fuel, clothing, and other commodities, materials, goods, services, and resources under any state or federal emergency services programs.

He may adopt and implement the Commonwealth of Virginia Emergency Operations Plan, which provides for state-level emergency operations in response to any type of disaster or large-scale emergency affecting Virginia and that provides the needed framework within which more detailed emergency plans and procedures can be developed and maintained by state agencies, local governments, and other organizations.

He may direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is deemed necessary for the preservation of life, implement emergency mitigation, preparedness, response, or recovery actions; prescribe routes, modes of transportation, and destination in connection with evacuation; and control ingress and egress at an emergency area, including the movement of persons within the area and the occupancy of premises therein.

Executive orders, to include those declaring a state of emergency and directing evacuation, shall have the force and effect of law and the violation thereof shall be punishable as a civil penalty of not more than \$500 or as a Class 1 misdemeanor in every case where the executive order declares that its violation shall have such force and effect. Where an executive order declares a violation shall be punishable as a civil penalty, such violation shall be charged by summons and may be executed by a law-enforcement officer when such violation is observed by the officer. The summons used by a law-enforcement officer pursuant to this section shall be, in form, the same as the uniform summons for motor vehicle law violations as prescribed pursuant to § 46.2-388. The proceeds of such civil penalties collected pursuant to this section shall be paid and collected only in lawful money of the United States and paid into the state treasury to the credit of the Literary Fund.

Such executive orders declaring a state of emergency may address exceptional circumstances that exist relating to an order of quarantine or an order of isolation concerning a communicable disease of public health threat that is issued by the State Health Commissioner for an affected area of the Commonwealth pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1.

Except as to emergency plans issued to prescribe actions to be taken in the event of disasters and emergencies, no rule, regulation, or order issued under this section shall have any effect beyond June 30 next following the next adjournment of the regular session of the General Assembly but the same or a similar rule, regulation, or order may thereafter be issued again if not contrary to law

No rule, regulation, or order issued pursuant to a state of emergency shall have any effect beyond 30 days unless the General Assembly votes in the affirmative by two-thirds of each house of all elected members to approve a period longer than 30 days. A special session called to address such emergency shall take place only by electronic means;

(2) To appoint a State Coordinator of Emergency Management and authorize the appointment or employment of other personnel as is necessary to carry out the provisions of this chapter, and to

INTRODUCED

HB1039

59 remove, in his discretion, any and all persons serving hereunder;

60 (3) To procure supplies and equipment, to institute training and public information programs relative
61 to emergency management and to take other preparatory steps including the partial or full mobilization
62 of emergency management organizations in advance of actual disaster, to insure the furnishing of
63 adequately trained and equipped forces in time of need;

64 (4) To make such studies and surveys of industries, resources, and facilities in the Commonwealth as
65 may be necessary to ascertain the capabilities of the Commonwealth and to plan for the most efficient
66 emergency use thereof;

67 (5) On behalf of the Commonwealth to enter into mutual aid arrangements with other states and to
68 coordinate mutual aid plans between political subdivisions of the Commonwealth. After a state of
69 emergency is declared in another state and the Governor receives a written request for assistance from
70 the executive authority of that state, the Governor may authorize the use in the other state of personnel,
71 equipment, supplies, and materials of the Commonwealth, or of a political subdivision, with the consent
72 of the chief executive officer or governing body of the political subdivision;

73 (6) To delegate any administrative authority vested in him under this chapter, and to provide for the
74 further delegation of any such authority, as needed;

75 (7) Whenever, in the opinion of the Governor, the safety and welfare of the people of the
76 Commonwealth require the exercise of emergency measures due to a threatened or actual disaster, to
77 declare a state of emergency to exist;

78 (8) To request a major disaster declaration from the President, thereby certifying the need for federal
79 disaster assistance and ensuring the expenditure of a reasonable amount of funds of the Commonwealth,
80 its local governments, or other agencies for alleviating the damage, loss, hardship, or suffering resulting
81 from the disaster;

82 (9) To provide incident command system guidelines for state agencies and local emergency response
83 organizations;

84 (10) Whenever, in the opinion of the Governor or his designee, an employee of a state or local
85 public safety agency responding to a disaster has suffered an extreme personal or family hardship in the
86 affected area, such as the destruction of a personal residence or the existence of living conditions that
87 imperil the health and safety of an immediate family member of the employee, to direct the Comptroller
88 of the Commonwealth to issue warrants not to exceed \$2,500 per month, for up to three calendar
89 months, to the employee to assist the employee with the hardship; and

90 (11) During a disaster caused by a communicable disease of public health threat for which a state of
91 emergency has been declared pursuant to subdivision (7), to establish a program through which the
92 Governor may purchase PPE for private, nongovernmental entities and distribute the PPE to such
93 private, nongovernmental entities. If federal funding is available to establish and fund the program, the
94 Governor, if necessary to comply with any conditions attached to such federal funding, shall be entitled
95 to seek reimbursement for such purchases from the private, nongovernmental entities and may establish
96 and charge fees to recover the cost of administering the program, including the cost of procuring and
97 distributing the PPE. However, if federal funding is not available to establish and fund the program, the
98 Governor shall, prior to making such purchases, receive a contract for payment for purchase from the
99 private, nongovernmental entities for the full cost of procuring and distributing the PPE, which shall
100 include any amortized costs of administering the program. Any purchase made by the Governor pursuant
101 to this subdivision shall be exempt from the provisions of the Virginia Public Procurement Act
102 (§ 2.2-4300 et seq.), except the Governor shall be encouraged to comply with the provisions of
103 § 2.2-4310 when possible. The Governor shall also provide for competition where practicable and
104 include a written statement regarding the basis for awarding any contract. Prior to implementing such a
105 program, the Department of Emergency Management shall consult with and survey private,
106 nongovernmental entities in order to assess demand for participation in the program as well as the
107 quantity and types of personal protective equipment such entities would like to procure.

108 As used in this subdivision, "personal protective equipment" or "PPE" means equipment or supplies
109 worn or employed to minimize exposure to hazards that cause serious workplace injuries and illnesses
110 and may include items such as gloves, safety glasses and, shoes, earplugs or muffs, hard hats,
111 respirators, coveralls, vests, full body suits, hand sanitizer, plastic shields, or testing for the
112 communicable disease of public health threat.

113 **§ 44-146.17. (Effective July 1, 2023) Powers and duties of Governor.**

114 The Governor shall be Director of Emergency Management. He shall take such action from time to
115 time as is necessary for the adequate promotion and coordination of state and local emergency services
116 activities relating to the safety and welfare of the Commonwealth in time of disasters.

117 The Governor shall have, in addition to his powers hereinafter or elsewhere prescribed by law, the
118 following powers and duties:

119 (1) To proclaim and publish such rules and regulations and to issue such orders as may, in his
120 judgment, be necessary to accomplish the purposes of this chapter including, ~~but not limited to~~ such

measures as are in his judgment required to control, restrict, allocate, or regulate the use, sale, production, and distribution of food, fuel, clothing, and other commodities, materials, goods, services, and resources under any state or federal emergency services programs.

He may adopt and implement the Commonwealth of Virginia Emergency Operations Plan, which provides for state-level emergency operations in response to any type of disaster or large-scale emergency affecting Virginia and that provides the needed framework within which more detailed emergency plans and procedures can be developed and maintained by state agencies, local governments, and other organizations.

He may direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is deemed necessary for the preservation of life, implement emergency mitigation, preparedness, response, or recovery actions; prescribe routes, modes of transportation, and destination in connection with evacuation; and control ingress and egress at an emergency area, including the movement of persons within the area and the occupancy of premises therein.

Executive orders, to include those declaring a state of emergency and directing evacuation, shall have the force and effect of law and the violation thereof shall be punishable as a Class 1 misdemeanor in every case where the executive order declares that its violation shall have such force and effect.

Such executive orders declaring a state of emergency may address exceptional circumstances that exist relating to an order of quarantine or an order of isolation concerning a communicable disease of public health threat that is issued by the State Health Commissioner for an affected area of the Commonwealth pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1.

Except as to emergency plans issued to prescribe actions to be taken in the event of disasters and emergencies, no rule, regulation, or order issued under this section shall have any effect beyond June 30 next following the next adjournment of the regular session of the General Assembly but the same or a similar rule, regulation, or order may thereafter be issued again if not contrary to law

No rule, regulation, or order issued pursuant to a state of emergency shall have any effect beyond 30 days unless the General Assembly votes in the affirmative by two-thirds of each house of all elected members to approve a period longer than 30 days. A special session called to address such emergency shall take place only by electronic means;

(2) To appoint a State Coordinator of Emergency Management and authorize the appointment or employment of other personnel as is necessary to carry out the provisions of this chapter, and to remove, in his discretion, any and all persons serving hereunder;

(3) To procure supplies and equipment, to institute training and public information programs relative to emergency management and to take other preparatory steps including the partial or full mobilization of emergency management organizations in advance of actual disaster, to insure the furnishing of adequately trained and equipped forces in time of need;

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

(5) On behalf of the Commonwealth to enter into mutual aid arrangements with other states and to coordinate mutual aid plans between political subdivisions of the Commonwealth. After a state of emergency is declared in another state and the Governor receives a written request for assistance from the executive authority of that state, the Governor may authorize the use in the other state of personnel, equipment, supplies, and materials of the Commonwealth, or of a political subdivision, with the consent of the chief executive officer or governing body of the political subdivision;

(6) To delegate any administrative authority vested in him under this chapter, and to provide for the further delegation of any such authority, as needed;

(7) Whenever, in the opinion of the Governor, the safety and welfare of the people of the Commonwealth require the exercise of emergency measures due to a threatened or actual disaster, to declare a state of emergency to exist;

(8) To request a major disaster declaration from the President, thereby certifying the need for federal disaster assistance and ensuring the expenditure of a reasonable amount of funds of the Commonwealth, its local governments, or other agencies for alleviating the damage, loss, hardship, or suffering resulting from the disaster;

(9) To provide incident command system guidelines for state agencies and local emergency response organizations;

(10) Whenever, in the opinion of the Governor or his designee, an employee of a state or local public safety agency responding to a disaster has suffered an extreme personal or family hardship in the affected area, such as the destruction of a personal residence or the existence of living conditions that imperil the health and safety of an immediate family member of the employee, to direct the Comptroller of the Commonwealth to issue warrants not to exceed \$2,500 per month, for up to three calendar months, to the employee to assist the employee with the hardship; and

182 (11) During a disaster caused by a communicable disease of public health threat for which a state of
183 emergency has been declared pursuant to subdivision (7), to establish a program through which the
184 Governor may purchase PPE for private, nongovernmental entities and distribute the PPE to such
185 private, nongovernmental entities. If federal funding is available to establish and fund the program, the
186 Governor, if necessary to comply with any conditions attached to such federal funding, shall be entitled
187 to seek reimbursement for such purchases from the private, nongovernmental entities and may establish
188 and charge fees to recover the cost of administering the program, including the cost of procuring and
189 distributing the PPE. However, if federal funding is not available to establish and fund the program, the
190 Governor shall, prior to making such purchases, receive a contract for payment for purchase from the
191 private, nongovernmental entities for the full cost of procuring and distributing the PPE, which shall
192 include any amortized costs of administering the program. Any purchase made by the Governor pursuant
193 to this subdivision shall be exempt from the provisions of the Virginia Public Procurement Act
194 (§ 2.2-4300 et seq.), except the Governor shall be encouraged to comply with the provisions of §
195 2.2-4310 when possible. The Governor shall also provide for competition where practicable and include
196 a written statement regarding the basis for awarding any contract. Prior to implementing such a program,
197 the Department of Emergency Management shall consult with and survey private, nongovernmental
198 entities in order to assess demand for participation in the program as well as the quantity and types of
199 personal protective equipment such entities would like to procure.

200 As used in this subdivision, "personal protective equipment" or "PPE" means equipment or supplies
201 worn or employed to minimize exposure to hazards that cause serious workplace injuries and illnesses
202 and may include items such as gloves, safety glasses ~~and~~, shoes, earplugs or muffs, hard hats,
203 respirators, coveralls, vests, full body suits, hand sanitizer, plastic shields, or testing for the
204 communicable disease of public health threat.