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SENATE BILL NO. 1378

Offered January 13, 2021

Prefiled January 13, 2021

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

Patron—Newman

Referred to Committee on General Laws and Technology

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 March 1, 2021) 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 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~~ 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 30 days after the date of issuance. If, however, the General Assembly does not take any action on the rule, regulation, or order within the 30 days during which the rule, regulation, or order is effective, the Governor may once again issue the same rule, regulation, or order but shall thereafter be prohibited from issuing the same or a similar rule, regulation, or order relating to the same emergency;~~

(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

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59 emergency use thereof;

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

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

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

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

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

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

83 **§ 44-146.17. (Effective March 1, 2021, until July 1, 2023) Powers and duties of Governor.**

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

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

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90 judgment, be necessary to accomplish the purposes of this chapter including, but not limited to such
91 measures as are in his judgment required to control, restrict, allocate or regulate the use, sale, production
92 and distribution of food, fuel, clothing and other commodities, materials, goods, services and resources
93 under any state or federal emergency services programs.

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

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

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

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

118 Except as to emergency plans issued to prescribe actions to be taken in the event of disasters and
119 emergencies, no rule, regulation, or order issued under this section shall have any effect beyond June
120 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 30 days after the date of issuance. If, however, the General Assembly does not take any action on the rule, regulation, or order within the 30 days during which the rule, regulation, or order is effective, the Governor may once again issue the same rule, regulation, or order but shall thereafter be prohibited from issuing the same or a similar rule, regulation, or order relating to the same emergency;

(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

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

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

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

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(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;

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(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;

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246 public safety agency responding to a disaster has suffered an extreme personal or family hardship in the
247 affected area, such as the destruction of a personal residence or the existence of living conditions that
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251 (11) During a disaster caused by a communicable disease of public health threat for which a state of
252 emergency has been declared pursuant to subdivision (7), to establish a program through which the
253 Governor may purchase PPE for private, nongovernmental entities and distribute the PPE to such
254 private, nongovernmental entities. If federal funding is available to establish and fund the program, the
255 Governor, if necessary to comply with any conditions attached to such federal funding, shall be entitled
256 to seek reimbursement for such purchases from the private, nongovernmental entities and may establish
257 and charge fees to recover the cost of administering the program, including the cost of procuring and
258 distributing the PPE. However, if federal funding is not available to establish and fund the program, the
259 Governor shall, prior to making such purchases, receive a contract for payment for purchase from the
260 private nongovernmental entities for the full cost of procuring and distributing the PPE, which shall
261 include any amortized costs of administering the program. Any purchase made by the Governor pursuant
262 to this subdivision shall be exempt from the provisions of the Virginia Public Procurement Act (§
263 2.2-4300 et seq.), except the Governor shall be encouraged to comply with the provisions of § 2.2-4310
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