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HOUSE BILL NO. 835

Offered January 12, 2022

Prefiled January 12, 2022

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—Wilt

Committee Referral Pending

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 related to a state of emergency issued by the Governor that restricts, limits, or prohibits otherwise lawful action by a private business, nonprofit entity, or individual shall exceed a period of 45 days in duration unless the General Assembly votes in the affirmative to approve a period longer than 45 days by a two-thirds majority of each house of all members elected. The Governor shall thereafter be prohibited from issuing the same or a similar rule, regulation, or order relating to the same emergency. The General Assembly shall not approve the extension of an emergency

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59 *executive order that restricts, limits, or prohibits otherwise lawful action by a private business, nonprofit*
60 *entity, or individual to a date beyond the first full week of the next regular session of the General*
61 *Assembly, unless such date is requested by the Governor;*

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

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

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

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

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

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

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

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

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

95 (11) During a disaster caused by a communicable disease of public health threat for which a state of
96 emergency has been declared pursuant to subdivision (7), to establish a program through which the
97 Governor may purchase PPE for private, nongovernmental entities and distribute the PPE to such
98 private, nongovernmental entities. If federal funding is available to establish and fund the program, the
99 Governor, if necessary to comply with any conditions attached to such federal funding, shall be entitled
100 to seek reimbursement for such purchases from the private, nongovernmental entities and may establish
101 and charge fees to recover the cost of administering the program, including the cost of procuring and
102 distributing the PPE. However, if federal funding is not available to establish and fund the program, the
103 Governor shall, prior to making such purchases, receive a contract for payment for purchase from the
104 private, nongovernmental entities for the full cost of procuring and distributing the PPE, which shall
105 include any amortized costs of administering the program. Any purchase made by the Governor pursuant
106 to this subdivision shall be exempt from the provisions of the Virginia Public Procurement Act
107 (§ 2.2-4300 et seq.), except the Governor shall be encouraged to comply with the provisions of §
108 2.2-4310 when possible. The Governor shall also provide for competition where practicable and include
109 a written statement regarding the basis for awarding any contract. Prior to implementing such a program,
110 the Department of Emergency Management shall consult with and survey private, nongovernmental
111 entities in order to assess demand for participation in the program as well as the quantity and types of
112 personal protective equipment such entities would like to procure.

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

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(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;

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(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;

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