

22108055D

SENATE BILL NO. 4
AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the Governor
 on April 11, 2022)

(Patrons Prior to Substitute—Senators Suetterlein, Peake [SB 166], and Lewis [SB 731])

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.

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~~ 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 unless extended as provided herein. Thirty days after the date of issuance, the Governor may extend the rule, regulation, or order for a period of 30 days, during which period the General Assembly may be convened at any time to consider and take action on the rule, regulation, or order. The Governor shall report to the General Assembly on the status of the continued necessity of the rule, regulation, or order at the time of any extension.

If the General Assembly takes no action on the rule, regulation, or order within 60 days of the issuance of the rule, regulation, or order, the Governor may extend the rule, regulation, or order for an additional period of 30 days, during which period the General Assembly may be convened at any time to consider and take action on the rule, regulation, or order. In the event the Governor deems it to be

60 *in the interest of the Commonwealth that the rule, regulation, or order be in effect for more than 90*
61 *days, the General Assembly shall be convened to consider and take action on such extension. The*
62 *Governor shall thereafter be prohibited from issuing the same or a similar rule, regulation, or order*
63 *related to the same emergency without the approval of the General Assembly.*

64 *Such limitations on the duration of rules, regulations, or orders issued under this section shall not*
65 *apply to the Commonwealth of Virginia Emergency Operations Plan, nor shall they limit the ability of*
66 *agencies of the Commonwealth to utilize a sum sufficient or seek federal reimbursement for emergency*
67 *operations related to a previously declared emergency;*

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

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

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

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

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

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

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

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

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

101 (11) During a disaster caused by a communicable disease of public health threat for which a state of
102 emergency has been declared pursuant to subdivision (7), to establish a program through which the
103 Governor may purchase PPE for private, nongovernmental entities and distribute the PPE to such
104 private, nongovernmental entities. If federal funding is available to establish and fund the program, the
105 Governor, if necessary to comply with any conditions attached to such federal funding, shall be entitled
106 to seek reimbursement for such purchases from the private, nongovernmental entities and may establish
107 and charge fees to recover the cost of administering the program, including the cost of procuring and
108 distributing the PPE. However, if federal funding is not available to establish and fund the program, the
109 Governor shall, prior to making such purchases, receive a contract for payment for purchase from the
110 private nongovernmental entities for the full cost of procuring and distributing the PPE, which shall
111 include any amortized costs of administering the program. Any purchase made by the Governor pursuant
112 to this subdivision shall be exempt from the provisions of the Virginia Public Procurement Act
113 (§ 2.2-4300 et seq.), except the Governor shall be encouraged to comply with the provisions of
114 § 2.2-4310 when possible. The Governor shall also provide for competition where practicable and
115 include a written statement regarding the basis for awarding any contract. Prior to implementing such a
116 program, the Department of Emergency Management shall consult with and survey private,
117 nongovernmental entities in order to assess demand for participation in the program as well as the
118 quantity and types of personal protective equipment such entities would like to procure.

119 As used in this subdivision, "personal protective equipment" or "PPE" means equipment or supplies
120 worn or employed to minimize exposure to hazards that cause serious workplace injuries and illnesses
121 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.

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 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 unless extended as provided herein. Thirty days after the date of issuance, the Governor may extend the rule, regulation, or order for a period of 30 days, during which period the General Assembly may be convened at any time to consider and take action on the rule, regulation, or order. The Governor shall report to the General Assembly on the status of the continued necessity of the rule, regulation, or order at the time of any extension.~~

~~If the General Assembly takes no action on the rule, regulation, or order within 60 days of the issuance of the rule, regulation, or order, the Governor may extend the rule, regulation, or order for an additional period of 30 days, during which period the General Assembly may be convened at any time to consider and take action on the rule, regulation, or order. In the event the Governor deems it to be in the interest of the Commonwealth that the rule, regulation, or order be in effect for more than 90 days, the General Assembly shall be convened to consider and take action on such extension. The Governor shall thereafter be prohibited from issuing the same or a similar rule, regulation, or order related to the same emergency without the approval of the General Assembly.~~

~~Such limitations on the duration of rules, regulations, or orders issued under this section shall not apply to the Commonwealth of Virginia Emergency Operations Plan, nor shall they limit the ability of agencies of the Commonwealth to utilize a sum sufficient or seek federal reimbursement for emergency operations related to a previously declared 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;

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

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

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

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

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

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

206 (11) During a disaster caused by a communicable disease of public health threat for which a state of
207 emergency has been declared pursuant to subdivision (7), to establish a program through which the
208 Governor may purchase PPE for private, nongovernmental entities and distribute the PPE to such
209 private, nongovernmental entities. If federal funding is available to establish and fund the program, the
210 Governor, if necessary to comply with any conditions attached to such federal funding, shall be entitled
211 to seek reimbursement for such purchases from the private, nongovernmental entities and may establish
212 and charge fees to recover the cost of administering the program, including the cost of procuring and
213 distributing the PPE. However, if federal funding is not available to establish and fund the program, the
214 Governor shall, prior to making such purchases, receive a contract for payment for purchase from the
215 private nongovernmental entities for the full cost of procuring and distributing the PPE, which shall
216 include any amortized costs of administering the program. Any purchase made by the Governor pursuant
217 to this subdivision shall be exempt from the provisions of the Virginia Public Procurement Act
218 (§ 2.2-4300 et seq.), except the Governor shall be encouraged to comply with the provisions of
219 § 2.2-4310 when possible. The Governor shall also provide for competition where practicable and
220 include a written statement regarding the basis for awarding any contract. Prior to implementing such a
221 program, the Department of Emergency Management shall consult with and survey private,
222 nongovernmental entities in order to assess demand for participation in the program as well as the
223 quantity and types of personal protective equipment such entities would like to procure.

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