

CRS Report for Congress

Received through the CRS Web

Virginia Emergency Management and Homeland Security Statutory Authorities Summarized

May 27, 2004

Keith Bea
Specialist in American National Government
Government and Finance Division

L. Cheryl Runyon and Kae M. Warnock
Consultants
Government and Finance Division

Virginia Emergency Management and Homeland Security Statutory Authorities Summarized

Summary

The Commonwealth of Virginia Emergency Services and Disaster Law of 2000 (Va. Code §44-146.13) consolidated the state's emergency management statutes. The law delegates emergency powers to the governor, the Department of Emergency Management, and political subdivisions. It also provides for mutual aid agreements. Assistance and funding primarily emanate from federal aid and the Virginia Disaster Response Fund, which is administered by the Department of Emergency Management. The state constitution establishes the authority for continuity of government operations.

This report is one of a series that profiles emergency management and homeland security statutory authorities of the 50 states, the District of Columbia, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, American Samoa, Guam, and the U.S. Virgin Islands. Each profile identifies the more significant elements of state statutes, generally as codified. Congressional readers may wish to conduct further searches for related provisions using the Internet link presented in the last section of this report. The National Conference of State Legislatures provided primary research assistance in the development of these profiles under contract to the Congressional Research Service (CRS). Summary information on all of the profiles is presented in CRS Report RL32287. This report will be updated as developments warrant.

Contents

Entities with Key Responsibilities	1
Preparedness	3
Declaration Procedures	3
Types of Assistance	4
Mutual Aid	4
Funding	5
Hazard Mitigation	6
Continuity of Government Operations	6
Other	7
Key Terms	8
For Further Research	9

List of Tables

Table 1. Key Emergency Management and Homeland Security Terms Defined in Virginia Statutes, with Citations	8
---	---

Virginia Emergency Management and Homeland Security Statutory Authorities Summarized

Entities with Key Responsibilities

Governor: The governor serves as the state director of emergency management and is authorized to proclaim and publish rules and regulations, and to issue orders to control, restrict, allocate, and regulate the use, sale, production and distribution of food, fuel, commodities, materials and resources under state and federal emergency services programs. The governor is authorized to adopt and implement the state emergency operations plan to respond to any type of disaster affecting Virginia and provide the support necessary to produce more detailed plans and procedures to be developed and maintained by state agencies, local governments and other organizations. The governor may direct or compel the evacuation of the civilian population from stricken or threatened areas to preserve life; implement emergency mitigation, preparedness, response and recovery actions; prescribe routes and modes of transportation and destination; and control ingress and egress to an emergency area. The governor appoints the state coordinator of emergency management, who is to procure supplies and equipment, begin training and public information programs, take steps for the mobilization of emergency management organizations in advance of an actual disaster, and ensure the availability of trained and equipped forces. In addition, the governor directs studies of industries, resources, and facilities within the commonwealth to determine capabilities to plan the most efficient emergency use (Va. Code §44.146.17).

Secretary of Public Safety: The secretary is responsible to the governor for administration of the Department of Emergency Management and other specified agencies (Va. Code §2.2-221).

Department of Emergency Management (DEM): DEM officials must promulgate plans and programs to provide mitigation, preparedness, response and recovery programs; prepare and maintain the state emergency operations plan for response and recovery operations; and assign primary and support responsibilities for basic emergency services to state agencies, organizations, and personnel. DEM also coordinates and administers mitigation, preparedness, response and recovery plans and programs with federal, state and local government agencies and related groups, and provides guidance and assistance to state agencies and local governments to develop and maintain emergency management programs, plans and systems. DEM officials make recommendations to federal, state, and local agencies about preventive and preparedness measures to eliminate or reduce disasters and their impact and identifies necessities that may not be readily available. The department institutes

training and public information programs and consults with the state Board of Education and State Council of Higher Education about model school crisis and emergency management plans. DEM must develop standards and provide guidance to maintain state and local agency emergency operations plans; coordinates with federal, state and local governments and other organizations on emergency response management plans; and surveys public and private industries and facilities within the commonwealth to identify needed resources. During a state of emergency, DEM is responsible for receiving, evaluating, and disseminating information about impending or actual disasters and providing emergency operations facilities (Va. Code §44.146.18). DEM officials also coordinate the development of hazardous materials training and emergency response programs (Va. Code §44-146.35).

Coordinator of Emergency Management: The coordinator is appointed by the governor, and serves as the state emergency planning director (Va. Code §44.146.18), maintains a registry of shippers of hazardous radioactive material, and monitors transportation of the same within the commonwealth (Va. Code §44-146.30).

Political subdivisions: All political subdivisions are responsible for local disaster mitigation, preparedness, response and recovery activities and are authorized both to maintain an emergency management agency and hire a director of emergency management. When the governor declares an emergency, each political subdivision within the disaster area (with governor's supervision) may control, restrict, allocate, or regulate the use, sale, production, and distribution of food, fuel, materials, commodities, and services. Such decisions cannot affect systems in adjoining political subdivisions. Political subdivisions may enter into contracts to combat threatened or actual disasters to protect the public health and safety of people and property and to provide emergency assistance (Va. Code §44-146.19). Units of local government must appoint hazardous materials coordinators (Va. Code §44-146.38).

Department of Conservation and Recreation: Department officials are required to develop a flood protection plan for the commonwealth, inventory flood prone areas, record flood damages, develop a strategy to prevent or mitigate flood damage, and collect and distribute information. They also coordinate flood protection programs with federal flood protection programs, make information available to localities for planning, assist with floodplain management activities, inspect and establish guidelines for the National Flood Insurance Program, and coordinate with FEMA (Va. Code §10.1-602).

Soil and Water Conservation Board: The board organizes safety inspections of dams. If a dam is considered to be unsafe and poses imminent danger to life and property, the director of the Department of Conservation and Recreation is required to notify the Department of Emergency Services (Va. Code §10.1-605 et seq.).

State Hazardous Materials Emergency Response Advisory Council: The governor appoints council members from state agency representatives and other representatives from local government, industry, general public and environmental and emergency response interests. Council members provide advice to the emergency management coordinator about Hazardous Materials Emergency Response Program and to the Virginia Emergency Response Council. (Va. Code §44-146.39).

Virginia Emergency Response Council: The council consists of state agency heads or representatives, appointed by the governor, with expertise in the emergency response field (Va. Code §44-146.40).

Preparedness

The governor is authorized to provide incident command system guidelines to state agencies and local emergency response organizations (Va. Code §44.146.17 (9)).

The governor, state agency heads, local directors and governing bodies may use services, equipment, supplies, and facilities of commonwealth departments and political subdivisions, consistent with emergency operations plans (Va. Code §44-146.24).

When a state of war exists between the United States and a foreign country, or when the commonwealth is at peril as determined by the governor, air raid precautions such as blackouts and prohibition on movement of highway traffic may be instituted (Va. Code §44-147 et seq).

When a state of war exists, the governor may assign firefighters and equipment (Va. Code §44-152 et seq).

When a state of war exists, the governor is authorized to plan for troop movements on public highways (Va. Code §44-205).

Each nuclear electrical utility must notify customers annually about evacuation routes and other actions through newspaper advertisements (Va. Code §56-245.1:1).

See also “Entities with Key Responsibilities” *Department of Emergency Management*, above.

Declaration Procedures

The governor may declare that a state of emergency exists upon determining that the safety and welfare of the commonwealth requires the implementation of emergency measures due to a threatened or actual disaster (Va. Code §44.146.17 (7)).

Except for emergency plans issued to prescribe actions to be taken, no rule, regulation, or order issued under the statute remains in effect beyond June 30 following the next adjournment of the regular session of the General Assembly. A similar rule, regulation, or order, however, may be reissued. The governor’s executive orders have the force and effect of the law (Va. Code §44.146-17 (1)).

A local emergency may be declared by a local emergency management director with the consent of the governing body. If the governing body cannot convene because of the disaster, the director, deputy director or any member of the governing body may declare the local emergency, which must be confirmed at the next regularly scheduled meeting or at a special meeting called within 14 days of issuance of the

declaration. A declaration activates the local emergency operations plan, and the governing body must take appropriate action to end the declared emergency (Va. Code §44-146.21).

Types of Assistance

If an emergency does not require a governor's declaration, the coordinator of emergency management, after consulting with the Secretary of Public Safety, may enter into contracts to prevent or alleviate damage, loss, or hardship caused by an emergency and protect persons and property. The coordinator is not required to follow procedures for renting equipment, purchasing supplies, or expending public funds (Va. Code §44-146.18:2).

The Commission of Agriculture and Consumer Services develops and initiates programs for farmers affected by major disasters, and is authorized to make expenditures from the Farmers Major Disaster Fund to assist with meeting animal feed needs and providing supplemental staff for state and federal relief efforts. Localities also may initiate a grant program for emergency financial assistance to offset losses resulting from major disaster declared by governor (Va. Code §3.1-22.19). All loans are to be paid from the Farmers Major Disaster Fund. The governor is authorized to allocate money from appropriations for disaster planning and operations after declaration of a disaster (Va. Code §3.1-22.20).

Mutual Aid

The Emergency Management Assistance Compact is codified (Va. Code §44-146.28:1).

It is the policy of the commonwealth that emergency services are to be coordinated with comparable services of the federal government, other states, and private agencies (Va. Code §44-146.14 (b)).

The governor is authorized to enter into mutual aid agreements with other states and to coordinate mutual aid plans between political subdivisions (Va. Code §44.146.17 (5)).

The director of each local emergency management organization is authorized to develop mutual aid arrangements (Va. Code §44-146.19 D).

Two or more political subdivisions are authorized to establish interjurisdictional mutual aid agreements and conduct other activities. Any political subdivision may provide or receive disaster assistance if agreed to by its governing body. Options include local or statewide mutual aid programs. Political subdivisions may withdraw from agreements by ordinance or resolution and must notify the coordinator of emergency management (Va. Code §44-146.20).

The coordinator of emergency management may enter into agreements with political subdivisions to provide hazardous materials emergency response (Va. Code §44-146.36).

Contiguous local governments may enter into mutual aid agreements with federal authorities to allow police cooperation and assistance on federal land (Va. Code §15.2-1728).

Funding

The Virginia Disaster Response Fund is a non-lapsing revolving fund administered by the coordinator of emergency management. All expenses, costs, judgements, and reimbursements are to be paid into the fund, along with annual appropriations. Disbursements are to be made for costs and expenses to prevent or alleviate damage, loss, hardship, and suffering caused by emergencies, resource shortages, or natural or man-made disasters. The fund may also be used to procure, maintain, or replenish materials, equipment, and supplies, and to pay costs for recovery from disasters, including the restoration of public property and facilities. The coordinator of emergency management may seek reimbursement from persons causing or contributing to an emergency or disaster for sums disbursed from the fund for losses or damage caused by the said persons. If not paid within 60 days, the attorney general may institute legal proceedings and may recover legal, court costs and other expenses related to the collection of money. Also, the attorney general may recover costs incurred by any other state agency or political subdivision that acted at the direction of the coordinator (Va. Code §44-146.18:1).

After the governor declares a disaster, all state funds not constitutionally restricted may be spent. The governor is to allot funds to state agencies or political subdivisions to carry out disaster services. The governor is authorized to provide assistance to eligible applicants in areas included in a state of emergency, not a major disaster. DEM must establish guidelines and procedures for determining whether financial assistance should be provided to local governments, subject to statutory guidance. The governor must report to the chairs of specified legislative committees within 30 days of approving sums. DEM must report annually to the General Assembly about local jurisdictions that received financial assistance, and the amount each jurisdiction received (Va. Code §44-146.28).

The Flood Prevention and Protection Assistance Fund consists of money appropriated by the General Assembly. The director of the Department of Conservation and Recreation may make grants and loans to city, county, or town, water authorities to assist with the development and implementation of flood prevention or protection projects or studies. State money is to serve as a match to local funds, with up to \$50,000 per year eligible to be spent as a cost-share for federal flood protection studies (Va. Code §10.1-603.17 et seq.).

The Radiological Emergency Preparedness Fund can only support activities to maintain or operate emergency plans to address nuclear accidents (Va. Code §44-146.33).

The Virginia Disaster Response Fund supports responses to hazardous materials accidents. Expenditures may be recovered from the fund (Va. Code §44-146.37).

The governor is authorized to request a major disaster declaration from the President, and must certify the need for federal disaster assistance and ensure the

expenditure of a reasonable amount of funds from the commonwealth and local governments and other agencies to alleviate damage, loss, hardship and suffering (Va. Code §44-146.17 (8)).

If the federal government provides partial payment for disaster programs, the remaining portion is to be paid through a combination of state and local funds. Federal offers of services and equipment as a gift, grant, or loan to the commonwealth or political subdivisions may be accepted, and representatives may agree to terms of offers including indemnification of federal government (Va. Code §44-146.27).

The commissioner of social services may receive grants and funds to provide assistance for child welfare services, including day care, disaster relief, and emergency assistance awards, from the federal government (Va. Code §63.2-207).

The governing bodies of counties, cities, or towns may appropriate funds for emergency management (Va. Code §44-146.27 D.).

Hazard Mitigation

The governor is directed to consider hazard mitigation and other measures to prevent or reduce the consequences of disasters. State agencies responsible for floodplain management, stream encroachment, flow regulation, weather modification, fire prevention and control, air quality, public works, land use and planning and construction standards must study disaster prevention. The governor is authorized to make recommendations to the General Assembly, local governments and public and private entities for preventing and reducing disaster effects (Va. Code §44/146.22).

The Library of Virginia is required to develop a plan to preserve public records in the event of a disaster or emergency. The plan must be coordinated with DEM and copies distributed to agency heads (Va. Code §42.1-91).

Continuity of Government Operations

A quorum is a majority of members elected to each chamber of the General Assembly, but a smaller number may adjourn a session. Also, a smaller number (not less than 2/5 of the elected membership of each chamber) may meet and enact legislation if the governor declares by proclamation that a quorum cannot be convened because of an enemy attack on the Commonwealth (Va. Constitution Art IV §8).

Any locality, by ordinance, may assure the continuity of government in the event of an enemy attack or other disaster. Such an ordinance is limited in effect to six months after the attack or disaster, and must provide for the resumption of normal governmental authority at end of a six-month period (Va. Code §15.2-1413).

Other

Banks and other financial institutions may suspend business during an actual or threatened enemy attack, civil insurrection, fire, flood, hurricane, or riot that affects a community where the institution conducts business (Va. Code §6.1-12). In the event an enemy attack or disaster occurs where a savings institution conducts business, the institution may be temporarily closed with the approval of officers without prior approval of directors or the commonwealth commissioner (Va. Code §6.1-194.31).

A person rendering emergency care without compensation at the scene of an accident, fire, or life-threatening emergency is not liable for civil damages for acts or omissions resulting from care or assistance provided. Immunity also applies if aid is rendered at the request of police, fire, rescue or emergency squad personnel (Va. Code §8.01-225).

Commonwealth agencies, political subdivisions, federal agencies, and public or private agencies and their representatives are not liable for death or injury to persons or damage to property resulting from emergency services, except for willful misconduct. Persons owning or controlling real estate who provide shelter are not liable for death, injury, or property loss. A professional person licensed by another state who gratuitously renders aid during disaster is not liable for death, injury or property damage. No liability is incurred for injuries sustained while rendering care or assistance during actual or threatened discharge of hazardous substances, or cleaning up, treating and disposing of hazardous waste (Va. Code §44-146.23).

With respect to the activities of law enforcement, fire fighters, DEM officers, or hazardous materials teams, an owner of real property that is open to the public owes a duty to maintain the premises in reasonably safe condition or warn of dangers. The owner also must care for premises not normally open to the public if he or she has reason to know that first responders may come on the premises. Firefighters and police are owed a duty of ordinary care (Va. Code §8.01-226).

DEM employees must take a loyalty oath, and emergency management staff cannot advocate the use of force or violence against the United States or the commonwealth (Va. Code §44-146.25).

It is the duty of every emergency management organization to execute and enforce orders, rules, regulations made by the governor (Va. Code §44-146.26).

All officers and employees of the commonwealth who are members of the state defense force or the National Defense Executive Reserve are entitled to leaves of absence without pay or seniority loss (Va. Code §44-204).

Key Terms

Table 1. Key Emergency Management and Homeland Security Terms Defined in Virginia Statutes, with Citations

Terms	Citations
Discharge	Va. Code §44-146.16 (11)
Emergency	Va. Code §44-146.16 (2a)
Emergency flood insurance program	Va. Code §10.1-600
Emergency services	Va. Code §44.146.16 (3)
Flood hazard area	Va. Code §10.1-600
Flood plain	Va. Code §10.1-600
Flood prevention or protection	Va. Code §10.1-603.16
Flood prevention or protection studies	Va. Code §10.1-603.16
Hazardous materials	Va. Code §44-146.34 B
Hazard mitigation	Va. Code §44-146.16 (13)
Hazardous substances	Va. Code §44.146-16 (12)
Hundred year flood	Va. Code §10.1-600
Interjurisdictional agency for emergency management	Va. Code §44-146.16(9)
Local emergency	Va. Code §44-146.16(6)
Local emergency management organization	Va. Code §444.146.16(7)
Major disaster	Va. Code §44-146.16(4)
Man-made disaster	Va. Code §44-146.16(2)
National flood insurance program	Va. Code §10.1-600
Natural disaster	Va. Code § 44-146.16(1)
Regular flood insurance program	Va. Code §10.1-600
State of emergency	Va. Code §44-146.16

For Further Research

The citations noted above and other elements of the state code for Virginia may be searched at: [<http://leg1.state.va.us/000/src.htm>].