

# CRS Report for Congress

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## **South Dakota Emergency Management and Homeland Security Statutory Authorities Summarized**

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# South Dakota Emergency Management and Homeland Security Statutory Authorities

## Summary

Two sections of the South Dakota code, chapter 33 (“Emergency Management”) of title 33 (“Military Affairs”) and chapter 5 (“Disaster Relief Protective Measures”) of title 34 (“Public Health and Safety”) primarily address disasters and emergencies. The Secretary of Public Safety coordinates the state’s emergency management organizations, but only the governor is authorized to declare a disaster. The state reimburses political subdivisions for costs associated with emergency management activities. Funding for emergency requirements is obtained from the special revenue fund; each county must also establish an emergency management revenue fund. In the event of an attack, state officials must plan for the appointment of emergency interim successors.

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.

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# South Dakota Emergency Management and Homeland Security Statutory Authorities

## Entities with Key Responsibilities

*Governor:* The governor is authorized to: assume direct operational control over state emergency management functions; employ emergency management personnel to assist local authorities; use facilities, equipment, and supplies from any source (other than private); suspend state rules; control ingress and egress; procure, acquire, and dispense pharmaceutical agents or medical supplies; appoint and prescribe duties of out-of-state health care providers; provide for the examination and disposal of dead bodies; and provide for the protection, construction, reconstruction, repair, and maintenance of public or private transportation facilities. The governor may exercise these powers for up to six months after a declaration is issued, and the authority to exercise such powers may be restored for one or more six-month periods if the governor declares that the conditions persist (S. D. Cod. Laws § 33-15-8). Further, the governor may make, amend, and rescind orders to declare an emergency or disaster with consideration given to federal plans (S.D. Cod. Laws §33-15-9). The governor may also authorize and direct any political subdivision or any department, commission or agency to assist another (S.D. Cod. Laws §33-15-8.1).

The governor or adjutant general may cooperate with the President, other federal officials, and, with other state officials, regarding mobilization of emergency management forces, use of warning signals, maintenance of utilities, and evacuation of civilians (S.D. Cod. Laws §33-15-16). By executive order the governor may issue special permits for the movement of persons, commodities, supplies and equipment if a disaster occurs, or for an impending disaster (S.D. Cod. Laws §33-15-9.1).

*Secretary of Public Safety:* The secretary carries out the state's emergency management program, coordinates all activities for emergency management organizations in the state, and serves as liaison with emergency management agencies in the state and with the federal government (S.D. Cod. Laws § 33-15-22).

*Adjutant General:* The adjutant general prepares a comprehensive plan and program for emergency management in the state, which are to be integrated into and coordinated with federal, other state, and political subdivision plans. Also, the governor is authorized to: procure supplies and equipment; enter into agreements with any state or federal government or private agency to procure food, fuel, supplies, and equipment; distribute supplies, institute training and public information programs; take steps to mobilize before a disaster; and provide trained and equipped emergency staff (S.D. Cod. Laws §§33-15-10, 33-15-11). The adjutant general serves as director of emergency management (S.D. Cod. Laws §33-1-5).

*Department of Public Safety:* The department promulgates rules for reporting procedures on how to contact local officials in event of emergency (S.D. Cod. Laws §33-15-11.5), and may promulgate rules for establishment of minimum standards of local effort to obtain financial assistance and procedures, establish compensation levels for emergency management workers, and provide standards and procedures for the distribution of assistance authorized by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) (S.D. Cod. Laws §33-15-24.8).

*Division of Emergency Management:* The statute authorizes the creation of the state Division of Emergency Management (DEM) as well as local organizations for emergency management in political subdivisions (S. D. Cod. Laws §33-15-2 (1)).

*County emergency management organizations:* Each county is required to establish an emergency management organization and develop an emergency plan in accordance with the state plan and program (S.D. Cod. Laws §33-15-26).

*Director of local organization:* Directors of the local emergency management organizations are appointed by the executive officer of the governing body and are responsible for the development and operation of emergency disaster plans and the organization, administration, and operation of their local organizations, subject to the direction and control of the local executive officer or governing body (S.D. Cod. Laws §33-15-27).

*State Emergency Response Commission (SERC):* The statute establishes the commission, comprised of state department heads and the governor’s appointees with specific areas of expertise. The commission assists local emergency planning committees (LEPCs) develop and review local plans, determine the level of threat from accidental releases of chemicals, and the local capability to respond to emergencies. The commission must recommend emergency response capabilities and evaluate options and make recommendations to support emergency response planning. SERC duties include coordinating and implementing state requirements for the 42 U.S.C. §11001 et seq. (the Superfund Amendments and Reauthorization Act of 1986, or SARA), designating local emergency planning districts and supervising all activities of LEPCs, and coordinating and implementing federal grants for training LEPCs and public employees (S. D. Cod. Laws § 1-50-1 et seq.).

## **Preparedness**

Municipalities (S.D. Cod. Laws §§33-15-11.1, 11.2) and county commissions (S.D. Cod. Laws §§33-15-11.3, 11.4) annually provide contact information pertinent to local public officials and specified employees to DEM. The statute provides for the confidentiality of this information (S.D. Cod. Laws §33-15-11.6).

Political subdivisions are authorized to negotiate contracts and incur obligations to manage the response to a declared disaster or emergency “without regard to time-consuming formalities.” Officials, however, must comply with mandatory constitutional requirements (S.D. Cod. Laws §33-15-29).

See Also “Entities with Key Responsibilities”—*State Emergency Response Commission, Adjutant General*

## **Declaration Procedures**

The governor is authorized to declare an emergency or disaster if conditions exceed the capabilities of local governments (S.D. Cod. Laws §33-15-8 (2)). The governor may authorize and direct the resources of any political subdivision or any department to be provided to assist another political subdivision after declaring an emergency or disaster (S.D. Cod. Laws §33-15-8.1).

Boards of county commissioners may declare that a disaster or emergency exists to authorize expenditures from the snow removal and special emergency fund (S.D. Cod. Laws §34-5-2).

## **Types of Assistance**

The state compensates political subdivisions for the expenses incurred by employees while serving as emergency management workers. In addition, reimbursements must be made for death and disability payments and the losses or damages to supplies and equipment while under state control (S.D. Cod. Laws §33-15-20).

Counties are required to assist local government subdivisions in meeting eligibility requirements for state financial assistance (S.D. Con. Laws §33-15-24.3).

In counties where the governor has declared an emergency or disaster, and where local effort requirements have been met, the state provides financial assistance for additional operational costs (S.D. Con. Laws §33-15-24.4).

## **Mutual Aid**

Emergency management workers from one political subdivision have the same powers, duties, rights, and immunities as if performing similar services in their own when sent to another (S.D. Cod. Laws §33-15-8.2).

Counties may form emergency management districts and use appropriate general revenue funds for salaries and expenses (S.D. Cod. Laws §33-15-33).

Political subdivisions that receive emergency assistance from other subdivisions must provide reimbursements for all supplies, equipment, and associated expenses, subject to specifications (S.D. Cod. Laws §33-15-8.3).

The Uniform Emergency Management Assistance Compact is codified (S.D. Cod. Laws §33-15-48).

The adjutant general, with the approval of the governor, may enter into mutual aid arrangements with other states and coordinate mutual aid plans between political subdivisions (S.D. Cod. Laws § 33-15-13).

Directors of local emergency management organizations may develop mutual aid arrangements consistent with state plans and programs (S.D. Cod. Laws §33-15-34) and may, with the approval of the governor, enter into mutual aid arrangements with emergency management agencies in other states (S.D. Cod. Laws §33-15-35).

The governor may authorize and direct the resources of any political subdivision or department to be used to assist another political subdivision in a declared disaster or emergency (S.D. Cod. Laws §33-15-8.1).

## **Funding**

The statute created the “special emergency and disaster special revenue fund.” Expenditures from this fund are made for special emergency requirements of DEM that are not included in general and special appropriations. None of the funds reverts to general revenue (S.D. Cod. Laws §33-15-23). All collections, donations, and bequests (gifts, grants, loan) for emergency management are to be credited to the fund (S.D. Cod. Laws §33-15-24).

Counties are required to assist their political subdivisions with emergency and disaster funds in order to meet eligibility requirements for state financial assistance (S.D. Cod. Laws §33-15-24.3).

The state provides financial assistance (a maximum of 60% of costs) to counties for operational costs that must be incurred for an emergency or disaster situation. The governor is authorized to provide additional financial assistance if there is a need to preserve life and property (S.D. Cod. Laws §33-15-24.4). Such state financial assistance may be provided from funds appropriated to the “special emergency and disaster revenue fund” with vouchers executed by the county treasurer and approved by the adjutant general (S.D. Cod. Laws §33-15-24.5). County commissioners must estimate and certify the additional costs due to the emergency. Excess funds are returned to the state fund (S.D. Cod. Laws §33-15-24.6).

Each county is required to establish an emergency management revenue fund in the office of the county treasurer (S.D. Cod. Laws §33-15-31). If funds are not sufficient to meet the federal match, the county or district may request an advance of federal funds to be placed in the revenue fund (S.D. Cod. Laws §33-15-32).

The governor is authorized to cooperate with the federal government to implement the Stafford Act (S.D. Cod. Laws §33-15-25.1). The state auditor general is required to conduct audits of disaster project applications (S.D. Cod. Laws §33-15-25.2).

Each district organization for emergency management may establish a special emergency and disaster fund in the office of the county treasurer. Any reimbursement or matching funds must be deposited in the account and used for emergency management. Withdrawals must be made on warrants by the county auditor on vouchers approved by the district organization director and one commissioner of the organization’s advisory board (S.D. Cod. Laws §33-15-37).

Boards of county commissioners are authorized to establish county snow removal and special emergency reserve funds through a tax levy (S.D. Cod. Laws §34-5-2). The county snow removal and special emergency reserve fund must be used to meet emergency requirements during a disaster and to repay emergency aid grants from the state emergency fund, among other purposes (S.D. Cod. Laws §34-5-3). County boards and county highway superintendents determine when snow removal is needed; in order to expend such funds, the governor or county commissioners must declare that an emergency exists (S.D. Cod. Laws §34-5-4). Boards of county commissioners must approve expenditures from the fund (S.D. Cod. Laws §34-5-5). The county highway superintendent accounts for expenditures of snow removal funds (S.D. Cod. Laws §34-5-6). At the end of a fiscal year, the unexpended balance in the county snow removal and special emergency fund accumulates for future use. No part of the fund can revert to county general funds or be used for any other purpose (S.D. Cod. Laws §34-5-7).

The state Department of Environment and Natural Resources may accept and expend any federal funds, gifts, or contributions to support the State Emergency Response Commission (SERC) and local emergency planning committees (LEPCs). The legislature determines which facilities should pay a reasonable fee to defray the costs of the SERC and to establish a fee schedule. The statute created a fund to defray expenses associated with SERC activities including maintenance of a toll free number for reporting spills, helping local governments establish LEPCs, conducting training exercises, among others (S.D.Cod. Laws §1-50-4 et seq.).

## **Hazard Mitigation**

No specific provisions.

## **Continuity of Government Operations**

The Emergency Interim Executive and Judicial Succession Act provides for emergency interim succession for state offices and officers in political subdivisions, as well as emergency judges, should incumbents be unavailable in the event of an attack. All state officers must designate three to seven emergency interim successors and specify the order of succession. Emergency interim successors are to exercise the powers and discharge the duties of an office as specified. The legislature, by concurrent resolution, may at any time terminate the authority of emergency interim successors. Emergency interim successors only serve after an attack on the United States and serve until the governor appoints a successor, the successor is elected, or an officer becomes available (S.D. Cod. Laws § 1-30-1 *et seq.*). The statute also provides for emergency interim successors for local officials (S.D. Cod. Laws §1-30-5 et seq.).

The legislature has the power during emergencies that result from an enemy attack to (1) provide for the prompt and temporary succession to the powers and duties of public offices (elected or appointed) when incumbents are unavailable, and (2) adopt other measures to insure the continuity of government operations (S.D. Const. Art. III §29).



If the state government affairs in Pierre cannot be conducted by an emergency resulting from an enemy attack or anticipated attack, the governor shall, by proclamation, declare an emergency temporary location(s) for the seat of government within or without the state, and shall issue orders necessary for orderly transition to emergency temporary location(s). A temporary location(s) remains as the seat of government until the legislature establishes a new location(s) by law, or the governor declares the emergency over, and the seat of government returns to the normal location (S. D. Cod. Laws § 1-29-1 et seq.).

The governor may change the place of meeting for a legislative session within or without the state in the event of attack. In the event of an attack, the governor must call the legislature into session within 90 days. If the governor fails to issue such a call, the legislature automatically convenes where the governor has his office. Rules regarding the length and topics of the session during the emergency are suspended during such a session (S.D. Cod. Laws §§2-3-9, 2-3-10).

All acts of local government remain valid if local governments must relocate within or without the state (S.D. Cod. Laws §6-6-1 et seq.)

## **Other**

The governor, adjutant general, and officers of political subdivisions must use the services, equipment, supplies, facilities, and staff of state departments and political subdivisions. Local political subdivisions must exhaust all available resources before obtaining assistance from another subdivision. The state and local governments must exhaust their resources before obtaining private resources (S.D. Cod. Laws §33-15-21).

Emergency management workers from another state performing emergency management in South Dakota under mutual aid agreements or compacts may exercise the powers, duties, and immunities in South Dakota that they exercise in their home state (S.D. Cod. Laws §33-15-36).

The statute provides for workers compensation for emergency management workers (S.D. Cod. Laws §33-15-38).

A professional license is not required for emergency management workers using such skills during a disaster (S.D. Cod. Laws §33-15-39).

Real estate owners who voluntarily, and without compensation, permit sheltering during an attack or during a practice for a disaster or emergency are not civilly liable for death or injury to a person or loss or damage to property (S.D. Cod. Laws §33-15-41).

## Key Terms

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

<b>Terms</b>	<b>Citations</b>
Act of terrorism	S.D. Cod. Laws §22-8-12
Adjutant general	S.D. Codified Law s 33-15-1 (1)
Attack	S.D. Cod. Laws § 1-30-2 (1)
Disaster	S.D. Codified Law s 33-15-1 (2)
Emergency	S.D. Cod. Laws §§ 1-30-2 (2), 33-15-1 (3)
Emergency interim successor	S.D. Cod. Laws §1-30-2 (2)
Emergency management	S.D. Cod. Laws §33-15-1 (4)
Emergency management worker	S.D. Cod. Laws § 33-15-1 (5)
Hazardous material	S.D. Cod. Laws §33-15-1 (6)
Local effort	S.D. Cod. Laws § 33-15-1 (7)
Local organization for emergency management	S.D. Cod. Laws § 33-15-1 (8)
Office	S.D. Cod. Laws §1-30-2 (3)
SARA	S.D. Cod. Laws §1-50-7
Search and rescue	S.D. Cod. Laws §33-15-1 (10)
SERC	S.D. Cod. Laws §1-50-7
Unavailable	S.D. Cod. Laws §1-30-2 (5)

## For Further Research

The citations noted above and other elements of the state code for South Dakota may be searched at: [<http://legis.state.sd.us/statutes/index.cfm>].